

# THE ENFORCEMENT GAP

## Federal Strategy Neglects Sources of Crime Guns

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**A Report by Americans for Gun Safety Foundation**

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## Executive Summary

Last year, Americans for Gun Safety Foundation (AGSF) issued *The Enforcement Gap: Federal Gun Laws Ignored*, a report showing that the Justice Department was not enforcing 20 of the 22 major federal gun laws. In this update,<sup>1</sup> AGSF finds that prosecutions for most types of firearm offenses continue to decline or remain below levels reached before the Justice Department's current gun enforcement strategy was adopted, and gun homicides have increased.<sup>2</sup> The report argues that this strategy is flawed in both concept and execution, and it offers recommendations for change.

Despite Attorney General John Ashcroft's stated goal of curbing the illegal supply of guns, the vast majority of federal firearm prosecutions appear to be aimed at: (1) increasing the severity of punishment for previously convicted felons discovered in possession of guns, and (2) charging criminals who have already used guns to commit violent or drug-related crimes in federal court.

This strategy may boost the sentences of criminals who possess and use firearms, but at best it addresses the gun crime problem only after the fact – that is, after a felon has obtained a gun, or a after a gun has been used to commit another serious offense. The federal government's current approach to guns is tantamount to fighting the drug problem by locking up every addict the police can find while ignoring the dealers who run large-scale narcotics distribution rings.

Too little attention is given to preventing criminals from getting guns in the first place. Federal charges are rarely brought against criminals caught attempting to buy firearms or against corrupt gun dealers and others who traffic in illegal guns. For example, the Attorney General has repeatedly instructed prosecutors to go after individuals who falsify information during background checks when buying firearms.<sup>3</sup> Yet prosecutions of these "lie-and-try" cases have actually declined over the last two years, representing an enormous missed opportunity to stop felons before they succeed in obtaining a gun to commit another crime.

After spending more than \$1 billion on its gun enforcement strategy, the Justice Department's efforts have not reduced gun crime – the number of firearm homicides has actually increased –

[1] This report covers federal gun charges during Fiscal Years 2000-2003 (the period from October 1, 1999 through September 30, 2003). Unless otherwise indicated, all references are to fiscal rather than calendar years, because this is how the federal government organizes its data. For example, when this report describes prosecutions that occurred during 2003, this means the period from October 1, 2002 through September 30, 2003.

[2] Using data obtained from the Justice Department through the Freedom of Information Act, AGSF analyzed prosecutions under the 22 major federal gun statutes. These statutes cover 96% of all federal firearm prosecutions over the past four years. They include offenses such as firearm theft, possession of a gun with an obliterated serial number, possession of a firearm by a felon, illegal sale of a firearm to a minor or other prohibited buyer, possession of a firearm in a school zone, the use of a firearm in the commission of a federal drug crime or violent felony and laws pertaining to corrupt firearms dealers. Prosecutions for violations of internal revenue statutes related to firearms, such as 26 USC 5812, 26 USC 5822, 26 USC 5841, 26 USC 5842 and 26 USC 5861 are not included. These statutes concern tax collection and other regulatory issues involving automatic weapons.

[3] Prepared Remarks of Attorney General Ashcroft at the Project Safe Neighborhoods National Conference, Philadelphia, PA January 30, 2003. See, <http://www.psn.gov/News.asp?FormMode=release&ID=80>.

while criminals continue to enjoy easy access to guns. This study points to gaping holes in enforcement that AGSF believes have undermined the current strategy. Among the report's most significant conclusions:

- **Despite the Attorney General's orders to vigorously prosecute the full range of federal firearms offenses, most of the major federal gun laws are all but ignored.**

Federal prosecutors direct almost all their firearms enforcement resources at felons caught in possession of firearms – many picked up by local police for unrelated offenses – and people who have used a firearm to commit a violent or drug crime. In 2003, 87% of all firearm-related cases brought by federal prosecutors involved these two charges. The other 20 major federal gun crimes – involving gun trafficking, corrupt gun dealers, stolen guns, selling to minors, obliterated serial numbers, and lying on the background check form in an attempt to purchase a firearm – are almost never prosecuted.

Not only is the total number of prosecutions low, but cases against people who supply guns to criminals continue to decline or remain below 2000 levels. For example, the number of prosecutions for lying on a firearms background check form actually declined last year by 8%. Even though more than 125,000 people were found to have submitted false information when the forms were checked against law enforcement databases and despite the Attorney General's emphasis on pursuing this crime, only 532 cases were filed. Likewise, only 32 prosecutions were brought against corrupt firearms dealers, a decline of 11% since 2000.

- **Increases in firearm homicides indicate that the Justice Department's enforcement strategy has failed to make communities safer.** Project Safe Neighborhoods (PSN), the Bush administration's signature gun enforcement initiative, is aimed at "dramatically reducing gun crimes throughout the nation." But while violent crime in general has been declining since 1994, seven years before PSN began, the number of firearm-related homicides has increased by almost 8% since 2000, the year before PSN was launched.<sup>4</sup>

In 2002, 9,369 homicides were committed with guns – a five-year high.<sup>5</sup> The Federal Bureau of Investigation has not yet released crime statistics for 2003, but preliminary FBI figures show the number of homicides rose again last year by 1.3%.<sup>6</sup> Not only is the number of firearm homicides increasing, but the proportion of all homicides committed with firearms also has risen slightly, from 69.5% in 2001 to 71.1% in 2002.<sup>7</sup> Almost 27% of all murders, robberies and

[4] Crime in the United States: 2002, Uniform Crime Reports: 2002, Crime Index Offenses Reports, Table 2.10, Federal Bureau of Investigation. Historical violent crime data obtained from Federal Bureau of Investigation, Uniform Crime Reports as prepared by the National Archive of Criminal Justice Data and made available through the Bureau of Justice Statistics website at <http://www.ojp.usdoj.gov/bjs/>.

[5] Historical firearm homicide data obtained from the Bureau of Justice Statistics website at <http://www.usdoj.gov/bjs/> on August 16, 2004.

[6] *Preliminary Crime Statistics*, Press Release, Federal Bureau of Investigation, May 24, 2004. While final homicide figures have not yet been released for 2003, historically at least two-thirds of all homicides are committed with a firearm. With preliminary homicide figures indicating an increase in overall homicides, it is likely that firearm homicides increased or remained steady over the last year.

[7] Crime in the United States: 2001 and Crime in the United States: 2002, Uniform Crime Reports, Federal Bureau of Investigation.

aggravated assaults in 2002 were committed with a firearm – the highest percentage of crimes committed with a firearm since 1997.<sup>8</sup>

- **Federal prosecutors are focusing on gun crimes covered by state law at the expense of cases that the states cannot fully address, such as gun trafficking.** In 2003, 87% of all prosecutions under the federal firearm laws involved two statutes – the provisions covering felons in possession of guns and the use of a gun in the commission of a violent felony or drug crime. Both of these laws are directed at the “end user” of the gun, as opposed to the seller or intermediary who made the firearm available. Only 9% of gun prosecutions involved the illegal purchase or sale of firearms, or statutes aimed at trafficking – such as the laws covering stolen guns or guns with obliterated serial numbers.

In fact, an examination of prosecution data – together with an examination of PSN program materials – leads to the conclusion that many defendants who have committed violent crimes are being charged with firearms offenses primarily so they can be prosecuted in federal court. In some cases, the availability of stiffer penalties in the federal system may make this a sensible approach. In other situations, however, prosecution in state court is likely to be as good or better, either because the state in question has a gun statute that parallels federal law or because the defendant has violated another state law providing for a lengthy prison term in addition to a federal gun statute.

In light of the small number of prosecutions that target interstate gun-running and other offenses with a stronger connection to uniquely federal interests, the broad use of federal gun violations to lock up defendants involved in criminal activities covered by state law is highly questionable, especially where it comes at the expense of efforts to stop criminals from getting guns in the first place. For instance, more than half the states do not have a law prohibiting lying on a firearm purchase background check form, two-thirds do not have the authority to inspect gun dealers or prosecute them for not keeping proper records, and no state has jurisdiction to investigate and prosecute illegal trafficking of firearms across state lines. If the federal government does not investigate and prosecute these types of cases, state and local authorities cannot step in to fill the vacuum.

In addition to documenting the shortcomings of the Justice Department’s gun enforcement practices, this report attempts to identify innovative approaches being used by U.S. Attorneys in several judicial districts as part Project Safe Neighborhoods. AGSF believes these “promising practices” should be rigorously assessed in an effort to identify models for other districts that want to improve the effectiveness of their efforts to stop the flow of guns to criminals. These promising practices will be highlighted throughout the report.<sup>9</sup>

[8] Crimes committed with firearms, 1973-2002, Bureau of Justice Statistics, BJS Webpage at <http://www.ojp.usdoj.gov/bjs/glance/tables/guncrimetab.htm>. Accessed on August 18, 2004.

[9] AGSF wrote to each U.S. Attorney to solicit input, but received no responses. The information in this report was obtained from various sources including *PSN in Practice: Local Contributions to the Network Against Gun Violence*, United States Department of Justice, and other publicly available documents in addition to the FOIA data.

## The Numbers in Brief

**Despite the Justice Department's orders, 20 of 22 federal gun laws are all but ignored and nearly all prosecutions are under two statutes that largely overlap with state laws.**

- In 2003, 87% of all federal gun prosecutions – or 10,789 out of 12,406 cases – were brought under two statutory provisions: one that prohibits the use of a firearm in a violent crime and another that bars felons from possessing a firearm.
- Of the 36,153 federal gun violations prosecuted over the last four years, an estimated 23,000 were brought only after the defendant used the gun to intimidate, threaten, injure or kill the victim.<sup>10</sup>

**With firearm homicides and other violent gun crimes rising, the Justice Department's gun enforcement strategy does not appear to be making communities safer.**

- The Justice Department has spent more than \$1 billion to fight firearm crimes since 2001, but the number of firearm homicide victims has increased by almost 8%.
- Almost 27% of all murders, robberies and aggravated assaults in 2002 were committed with a firearm – the highest percentage of crimes committed with a firearm since 1997.<sup>11</sup>

**Under the Justice Department's gun enforcement strategy, individuals who illegally sell guns and criminals who attempt to buy them are rarely prosecuted.**

- While corrupt firearm dealers account for the largest number of crime guns recovered in trafficking investigations, federal prosecutors filed only 32 cases against these “dirty dealers” in 2003, a decline of 11% since 2000.
- That same year, the number of federal prosecutions against individuals charged with lying on the firearm purchase background check form totaled only 532, even though 126,181 forms were found to contain false information when checked against law enforcement databases. Prosecutions of these “lie and try” violations were down 8% in 2003 compared to 2002.
- About 9 out of 10 crime guns show signs of illegal trafficking, but in 2003 federal prosecutors filed only 188 cases charging violations of the criminal laws that specifically target this problem. This was a 5% decrease compared to 2002, and for the first time trafficking cases made up less than 2% of total gun prosecutions.

[10] This estimate is based on data in Federal Firearm Offenders, 1992-1998-With Preliminary Data for 1999, United States Department of Justice, Bureau of Justice Statistics, June 2000.

[11] Crimes committed with firearms, 1973-2002, Bureau of Justice Statistics, BJS Webpage at <http://www.ojp.usdoj.gov/bjs/glance/tables/guncrimetab.htm>. Accessed on August 18, 2004.

- Even though federal law enforcement agents know that firearms with obliterated serial numbers almost certainly have been illegally trafficked – and despite the fact that police recover thousands of guns with filed-off serial numbers every year – the number of prosecutions for possession of a firearm with an obliterated serial number declined by almost 9% in 2003 and totaled only 89 across the nation.
- Last year, the Justice Department spent \$9 million on salaries for prosecutors dedicated to “Project Sentry,” a program that focuses on schools. In 2003, however, only 23 cases were brought under the statutes prohibiting possession of firearms in a school zone and the sale of firearms to minors. This works out to a \$391,304 per case for prosecutor salaries alone.
- While the Bureau of Alcohol, Tobacco, Firearms and Explosives admits, “firearms that are stolen pose a significant threat to society in general and law enforcement specifically,” federal prosecutions under the statutes specifically covering stolen firearms totaled only 234 cases in 2003.<sup>12</sup>

[12] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Kraft, Mark, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 9.



## Attorney General Ashcroft's Vision for Gun Enforcement

**"Boston's homicide rate has nearly doubled compared to this time last year, an alarming spike that comes as gunplay in the city has exploded by 100 percent, a law enforcement source told the Herald."<sup>13</sup>**

- Boston Herald, August 5, 2004

In the Spring of 2001, President George W. Bush and Attorney General John Ashcroft launched Project Safe Neighborhoods (PSN), a gun violence reduction program designed to forge working alliances between the United States Attorneys' Offices; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and state and local law enforcement.

PSN is modeled on Project Exile, an anti-crime strategy instituted in Richmond, Virginia during the mid-1990s that has been credited with reducing firearm homicides in that city by almost 40 percent. Over a four-year period, the federal government has provided more than \$1 billion in Project Safe Neighborhood funding to hire new federal and state prosecutors, support investigations, provide training and develop and promote community outreach efforts.

### Goals of Project Safe Neighborhoods

One of PSN's main goals is to target the sources of firearms used by criminals. A January 2002 United States Attorneys Bulletin noted that the Justice Department hoped to achieve "heightened enforcement of all federal laws against illegal gun traffickers, as well

as corrupt federal firearms licensees that supply them, with an emphasis on those gun traffickers who supply illegal firearms to violent organizations and juveniles."<sup>14</sup>

Ashcroft has often spoken of the need for aggressive and comprehensive enforcement of federal gun laws. Indeed, the Attorney General has reiterated the importance of targeting the illegal trafficking of firearms and the other sources of crime guns for felons on several occasions since PSN was initiated. Consider the following statements:

**2002:** "...I have directed each United States Attorney to prosecute, to the fullest extent possible, the following groups of offenders: violent offenders and organizations who use guns, illegal gun traffickers, and individuals who are prohibited from lawfully possessing a gun – such as felons in possession of a gun and those who attempt to purchase a gun in violation of the Brady Act [the statute requiring background checks on gun purchases from licensed dealers]. Under the nation's tough federal sentencing guidelines, criminals will serve hard federal time if convicted of one these crimes." <sup>15</sup>

[13] *Hub gunplay shoots up at alarming rate*, Sweet, Laurel J., Boston Herald, August 5, 2004.

[14] *Project Safe Neighborhoods: America's Network Against Gun Violence*, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 3.

[15] Attorney General Ashcroft's Speech Given at the Project Safe Neighborhoods National Conference, Columbia, SC, January 23, 2002. See, <http://www.psn.gov/News.asp?FormMode=release&ID=21>.

**2003:** *"Today, I am directing all U.S. Attorneys, in consultation with ATF and the Executive Office of U.S. Attorneys, to review and report the progress on my directive in June 2001 to pursue more "lie and try" cases – where criminals lie about their past criminal convictions and are denied a gun sale because a Brady background check catches their lie. Even though these individuals do not succeed in obtaining a gun, they have committed a separate federal crime. We want them to know if they even try, we will prosecute."*<sup>16</sup>

**2004:** *"PSN is not just a prosecution program – it is a comprehensive program. We are achieving our goals of reducing illegal gun possession and abuse by not stopping at merely prosecuting the gun-toting criminals. We are cutting off the supply of illegal guns at the source by targeting those who put these illegal guns out on the streets and into the hands of criminals."*<sup>17</sup>

**2004:** *"[I]n addition to prosecuting gun crime in order to take those who commit it off the streets, Project Safe Neighborhoods is working to prevent gun crime by reaching potential perpetrators before it's too late."*<sup>18</sup>

Moreover, at the February 2003 Project Safe Neighborhoods National Conference, Ashcroft repeated his instruction for U.S. Attorneys to combat gun trafficking by focusing on cases where individuals lie on background check forms and directed the ATF's Criminal Division to establish procedures for coordinating investigation and prosecution of gun trafficking cases that cross state and district boundaries.<sup>19</sup>

Based on these statements, AGSF concludes that the Attorney General intends for PSN to focus on trafficking cases and other sources of illegal firearms, and we have no reason to doubt that he believes federal prosecutors are engaged in a systematic effort to bring these types of cases and cut off the supply of guns to criminals. Unfortunately, the Justice Department's own data show that Ashcroft's vision is not being fulfilled as his orders are being ignored. While federal prosecutions under two provisions – the statutes aimed at felons who possess guns and people who use guns in violent felonies and drug crimes – have increased dramatically, prosecutions for most other federal firearms offenses have declined. In fact, these statutes are rarely enforced.

[16] Prepared Remarks of Attorney General Ashcroft at the Project Safe Neighborhoods National Conference, Philadelphia, PA January 30, 2003. See, <http://www.psn.gov/News.asp?FormMode=release&ID=80>.

[17] Prepared Remarks of Attorney General John Ashcroft, PSN National Conference, Kansas City Missouri, Wednesday, June 16, 2004. See, [http://www.atf.gov/press/fy04press/062204ag\\_psn.htm](http://www.atf.gov/press/fy04press/062204ag_psn.htm).

[18] Project Safe Neighborhoods: Americans Network Against Gun Violence website at: <http://www.psn.gov/>. Accessed on August 2, 2004.

[19] Prepared Remarks of Attorney General Ashcroft at the Project Safe Neighborhoods National Conference, Philadelphia, PA January 30, 2003. See, <http://www.psn.gov/News.asp?FormMode=release&ID=80>.

## SECTION 2

# Project Safe Neighborhoods and the Enforcement Pendulum

Almost thirty years ago, ATF gradually shifted its enforcement priorities from targeting felons who possess and use firearms in violent crimes to targeting people who provide firearms to criminals – firearm traffickers. “This shift in enforcement priorities proved controversial. The National Rifle Association (NRA) opposed the gun-trafficking focus on the grounds the ATF was violating the constitutional rights of gun owners through their overzealous enforcement strategies.”<sup>20</sup> As a consequence, the effort to focus on trafficking that began during the Ford administration was reversed during the Reagan and George H.W. Bush administrations, and street-level felons and violent criminals again became the primary firearms enforcement priority.<sup>21</sup>

Under the Clinton administration, the enforcement pendulum swung back in the other direction. Under the Youth Crime Gun Interdiction Initiative, a project aimed at reducing firearm crimes committed by teens, the Justice Department directed enforcement resources at individuals who supplied juveniles with guns. Although many factors contribute

to the decline in crime, it is worth noting that the firearm crime rate declined by almost 50 percent between 1993 and 2001.<sup>22</sup>

At least one academic analysis has suggested that blocking the transactions that supply guns for use by criminals, or at the very least a balance between this approach and targeting felons and their source of firearms, could be the foundation of a more successful approach to fighting crime.<sup>23</sup> A strategy that emphasized cutting off the supply of illegal guns would be fully consistent with the Attorney General’s conception of Project Safe Neighborhoods – in fact, it might even match his vision more closely than the way PSN is currently being implemented.

According to the ATF, criminals obtain their guns from (1) unlicensed sellers, (2) corrupt dealers, (3) people who agree to buy guns on their behalf – also known as “straw buyers,” or (4) thefts from gun stores or residences.<sup>24</sup> The ATF has noted “one available strategy to reduce access by prohibited persons is to focus on illegal sellers, in order to reduce the supply of firearms available to illegal buyers.”<sup>25</sup>

[20] Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets, Cook, Philip J., and Braga, Anthony J., Terry Sanford Institute of Public Policy, Duke University, Working Paper Series (SAN01-11), February 2001.

[21] Ibid.

[22] Crimes committed with firearms, 1973-2002, United States Department of Justice, Bureau of Justice Statistics.

[23] Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets, Cook, Philip J. and Braga, Anthony J. Terry Sanford Institute of Public Policy, Duke University, Working Paper Series (SAN01-11), February 2001.

[24] Commerce in Firearms in the United States, Bureau of Alcohol, Tobacco, Firearms and Explosives, February 2000, p. 19.

[25] Ibid.

### Promising Practice: Mandatory Tracing of Firearms

Several districts have incorporated mandatory firearm tracing as an element of Project Safe Neighborhoods. The Middle District of Tennessee and the Western District of Oklahoma require local law enforcement participating in PSN (also known as “Project Exile”) to trace all firearms recovered. In the Oklahoma program, investigators enter all gun crimes into a database and create a comprehensive crime map that pinpoints the areas

where gun crimes are occurring and the people associated with these crimes. These crime-mapping efforts were instrumental in the indictment of three gun dealers in 2003 who were unlawfully supplying firearms to felons. Although the impact of tracing is difficult to determine from the prosecution data, AGSF applauds the attempt to make strategic use of tracing data an attempt to identify the sources of crime guns and shut them down.

The ATF also says that crime gun tracing helps isolate the source of illegal weapons recovered by law enforcement.<sup>26</sup> Crime gun tracing can identify the manufacturer, distributor, and licensed dealer who originally sold the firearm and the first retail purchaser of the gun. Analysis of crime gun traces can reveal, in combination with other investigative techniques, both licensed dealer and non-licensed individuals who engage in illegally supplying guns to criminals.

However, while Attorney General Ashcroft has said that PSN is “working to prevent gun crime by reaching potential perpetrators before it’s too late,”<sup>27</sup> prosecution data suggest that the Justice Department uses most of its resources to prosecute felons after they

obtain a firearm, or worse, after a felon has committed a violent crime.

A review of Department of Justice prosecution data shows that in 2003, 87 percent of all prosecutions under the federal firearms statutes involved “felon in possession” charges or the offense of using a gun in the commission of a violent felony or drug crime. Under PSN, these offenses have come to represent an increasingly significant part of the federal government’s overall approach to firearm prosecutions. The percentage of “felon in possession” charges and the offense of using a gun during the commission of a violent felony has steadily risen over the past four years – from 83% in 2000 to 87% of all federal firearm prosecutions in 2003.

[26] Ibid.

[27] Project Safe Neighborhoods: Americans Network Against Gun Violence website at: <http://www.psn.gov/>. Accessed on August 2, 2004.

Prosecutions Involving Felons and Violent Crimes – FY 2000-2003	
2000	5,908
2001	6,875
2002	8,434
2003	10,789

The other twenty major federal gun laws – the statutory provisions covering illegal gun trafficking, corrupt gun dealers, selling to minors, obliterated serial numbers, stolen guns, and “lie and try” – constitute only 9% of prosecutions. Other minor gun-related crimes encompass the remaining 4% of prosecutions.

These prosecution numbers show that rather than focusing on keeping guns out of the hands of criminals and other prohibited purchasers, the main effect of Project Safe Neighborhoods has been to prioritize prosecution of criminals who use guns only after they have obtained a firearm illegally, and in many cases after they have had the opportunity to use it in the commission of another crime. In fact, an examination of historical trends shows that of 36,153 federal firearm prosecutions, approximately 23,000 were commenced *after* the gun was used to intimidate, threaten, injury or kill the victim.<sup>28</sup>

#### **A CLOSER LOOK: Federal Statutes Prohibiting Felons From Possessing a Firearm and Using a Firearm During the Commission of a Violent Felony**

U.S. Attorneys have used PSN primarily to prosecute people prohibited from possessing firearms or who use firearms in the course of other illegal activities. Section 922(g) of Title 18 of the United States Code bars felons and other prohibited buyers from possessing a firearm.

Sections 924(c) makes it a federal crime to use a firearm in cases of drug trafficking or any other violent felony that can be prosecuted in federal court. These two statutes make up the vast majority of prosecutions under PSN. These statutes are often used against individuals who commit local, street level crimes so that they may be subjected to stiffer federal sentences.

[28] This estimate is based on data in Federal Firearm Offenders, 1992-1998-With Preliminary Data for 1999, United States Department of Justice, Bureau of Justice Statistics, June 2000.

[29] *Project Safe Neighborhoods: America's Network Against Gun Violence*, United States Attorney Bulletin, January 2002, Volume 50, No. 1, Page 3.



## Ignoring The Source of Crime Guns

The concentration of prosecutions on these two offenses is surprising since one of the primary national objectives of the enforcement of federal firearms laws is to target illegal gun traffickers, corrupt gun dealers, and juveniles who are involved in the firearms trade.<sup>29</sup>

Unfortunately, by using the resources available under Project Safe Neighborhoods primarily to prosecute felons found in possession of a firearm and people caught using a firearm during the commission of a violent or drug offense, the Justice Department neglects trafficking, straw purchasing and lying on the background check form, missing chances to curb the supply of guns to criminals.

While the Attorney General has directed U.S. Attorneys to prosecute gun traffickers, corrupt dealers and prohibited purchasers who "lie and try," Justice Department data shows that criminal cases filed against these offenders have actually declined. For example, "dirty dealer" and lie-and-try prosecutions both fell over the last four years. About 1 in 10 of all federal firearm prosecutions involve these offenses. The ATF acknowledges that "firearms that are stolen pose a significant threat to society in general and law enforcement specifically," but between 2000 and 2003, prosecutions for cases involving stolen firearms only accounted for just 2% of all federal firearm prosecutions.<sup>30</sup>

Percentage of Federal Firearm Prosecutions By Offense Categories							
% Of All Firearms Cases	Use in violent/ drug crimes and felons in possession	Lying on Firearm Purchase Form	Stolen Firearms	Trafficking	Obliterated Serial Number	Corrupt Firearms Dealer	Supplying Firearms To Minor/ School
<b>FY 2003</b>	87%	4.2%	1.88%	1.5%	0.7%	0.3%	0.2%
<b>FY 2000 to 2003</b>	85%	5.6%	2.0%	1.9%	1.0%	0.3%	0.2%

[30] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Kraft, Mark, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 9.

**Licensed gun dealers are rarely inspected and "dirty dealers" are almost never prosecuted and put out of business.**

- Although corrupt licensed gun dealers are the biggest source of illegal firearms recovered in gun trafficking operations, federal prosecutors brought only 120 cases between 2000 and 2003 under the three statutes that deal with corrupt gun stores, with only 32 cases against dealers filed in 2003.
- Federal prosecutors in states that are well-known sources of trafficked firearms prosecute few gun dealers that have been found in violation of federal law. In Ohio, only 1 in every 100 compliance inspections that uncovers violations leads to a prosecution. Alabama, Louisiana, Mississippi and South Carolina brought no criminal cases involving corrupt dealers.
- In 2003, prosecutors in 29 states, home to 50,675 federal firearms licensees, filed no cases at all against dirty dealers.

As noted earlier, criminals can get their firearms from: (1) unlicensed sellers, (2) corrupt dealers, (3) straw purchasers – individuals who illegal purchase firearms for criminals, or (4) thefts from gun stores or individual gun owners in commercial or residential bur-

glaries.<sup>31</sup> A closer analysis of Justice Department prosecution data reveals a widening disparity between the prosecution of felons using or possessing guns on one hand and individuals who sell guns illegally on the other.

[31] *Commerce in Firearms in the United States*, Bureau of Alcohol, Tobacco, Firearms and Explosives, February 2000, p. 19.

## Prohibited Buyers in Possession/Possession While Committing Federal Crime

Statute State	2000			2001			2002			2003			TOTAL
	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	
Alabama	111	48		129	77		202	90		294	105		1056
Alaska	6	9		12	7		13	9		18	21		95
Arizona	67	57		92	44		93	53		141	76		623
Arkansas	29	9		30	16		35	22		48	24		213
California	169	89		194	81		219	98		247	82	2	1181
Colorado	78	16		75	17		83	14		126	28		437
Conn.	37	6		48	9		45	6		45	8		204
Delaware	2	4		10	12		50	5		34	3		120
Florida	145	79	1	220	102	1	228	100	3	301	124	4	1,308
Georgia	119	58		187	95		139	76		213	50	1	938
Hawaii	10	1		9	0		29	1		79	7		136
Idaho	8	1		8	6		33	14		47	11		128
Illinois	102	46		75	34		153	63		204	53		730
Indiana	76	40		70	45		80	63		100	49		523
Iowa	90	29		81	28		83	21		135	34		501
Kansas	64	49		59	39	1	69	42		100	52		475
Kentucky	41	46	1	91	64	1	111	71		126	68		620
Louisiana	131	11		114	20		144	34		182	47	1	684
Maine	39	2		20	5		40	12		47	6		171
Maryland	212	11		170	24		107	43		147	54		768
Mass	21	2		35	15		55	26		76	15		245
Michigan	91	29		157	24		269	39		309	97		1015
Minnesota	37	12		31	4		18	12		43	19		176
Mississippi	50	35		53	34		60	31		79	39		381
Missouri	237	62		258	46	1	316	60		489	103		1,572
Montana	16	18		24	15		35	19		65	25		217
Nebraska	19	15		36	16		54	36		110	57		343
Nevada	56	18		63	5		145	13		175	13		488

### LEGEND

**922(g):** Felon in possession

**924(c):** Use of firearm in commission of violent/drug crime

**924(0):** Conspiracy to commit violent or drug crime with firearm

Prohibited Buyers in Possession/Possession While Committing Federal Crime *continued*

Statute State	2000			2001			2002			2003			TOTAL
	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	
New Hamp.	8	1		8	5		12	1		21	3		59
New Jersey	97	3		43	6		74	4		84	6	1	318
N. Mexico	32	33		63	36		69	27		61	32		353
New York	168	82	1	216	98		269	138	1	356	155		1,484
No. Car.	152	160	3	194	131		259	134		423	169	1	1,626
No. Dak.	17	1		14	5		33	9		27	7		113
Ohio	65	33		72	28		118	37		177	45	1	576
Oklahoma	61	39		52	41		89	30		132	49		493
Oregon	81	19		74	11		108	19		132	16		460
Penn.	140	71		161	115		203	99		201	110		1,100
Rhode Isl.	14	5		17	4		22	2		29	5		98
So. Car.	48	32	1	97	46	2	208	79		199	72	2	786
So. Dak.	10	9		12	7		21	9		21	4		93
Tennessee	110	77		194	117		300	114		407	153		1,472
Texas	441	131	1	532	143		427	179	2	547	227		2,630
Utah	66	7		152	30		196	22		272	48		793
Vermont	12			24	7		14	12		18	3		90
Virginia	236	154		262	179	1	295	172		334	229	1	1,863
Washington	37	21		32	18		82	43		101	51		385
W. Virginia	53	25		41	16		86	27		75	30	1	354
Wisconsin	54	15		68	9		70	15		62	15		308
Wyoming	14	5		13	4		27	17		61	12		153
DC	107	46		129	55		156	67		217	82		859
Guam	5	1		6	1		8			7			28
N. Nar. Is.	1						3			1			5
Puerto Rico	3	13		10	24		13	19		12	20	2	116
Virgin Islands	10	10		7	4		8	2		2			43
<b>Total</b>	<b>4,105</b>	<b>1,795</b>	<b>8</b>	<b>4,844</b>	<b>2,024</b>	<b>7</b>	<b>6,078</b>	<b>2,350</b>	<b>6</b>	<b>7,959</b>	<b>2,813</b>	<b>17</b>	<b>32,006</b>

**LEGEND**

**922(g): Felon in possession**

**924(c): Use of firearm in commission of violent/drug crime**

**924(o): Conspiracy to commit violent or drug crime with firearm**

## State-by-State Prosecutions of Federal Gun Laws (FY2000-FY2003)

Statute	FFLs	Lying	Traf.	Oblt	Stolen	Minor	Schools	Felons	Total	Population	Rate
State											
Alabama	0	26	9	9	26	0	11	1,056	1,137	4,500,752	25.26
Alaska	0	4	2	2	6	0	1	95	110	648,818	16.95
Arizona	6	35	14	6	25	8	5	623	722	5,580,811	12.93
Arkansas	0	26	5	5	7	0	0	213	256	2,725,714	9.39
California	3	78	27	11	14	1	0	1,181	1,315	35,484,453	3.7
Colorado	5	43	5	8	4	0	0	437	502	4,550,688	11.03
Conn.	0	1	11	1	7	0	0	204	224	3,483,372	6.43
Delaware	0	20	2	0	1	0	1	120	144	817,491	17.61
Florida	16	159	31	8	22	0	0	1,308	1,544	17,019,068	9.07
Georgia	2	103	34	16	17	0	0	938	1,110	8,684,715	12.78
Hawaii	0	0	1	3	0	0	0	136	140	1,257,608	11.13
Idaho	0	9	2	4	2	0	0	128	145	1,366,322	10.61
Illinois	6	32	23	13	14	0	0	730	818	12,653,544	6.46
Indiana	5	115	6	5	15	0	0	523	669	6,195,643	10.79
Iowa	0	15	2	3	21	0	0	501	542	2,944,062	18.4
Kansas	1	18	11	2	14	0	0	475	521	2,723,507	19.12
Kentucky	6	62	41	6	35	0	0	620	770	4,117,827	18.69
Louisiana	0	67	4	9	16	0	0	684	780	4,496,334	17.34
Maine	2	37	3	1	12	1	0	171	227	1,305,728	17.38
Maryland	0	14	6	5	7	0	1	768	801	5,508,909	14.54
Mass	1	12	17	10	9	0	0	245	294	6,433,422	4.56
Michigan	0	21	10	14	21	0	0	1,015	1,081	10,079,985	10.72
Minnesota	1	16	4	3	8	1	0	176	209	5,059,375	4.13
Mississippi	0	28	3	8	14	0	0	381	434	2,881,281	15.06
Missouri	3	25	20	12	25	1	0	1,572	1,658	5,704,484	29.06
Montana	1	5	0	2	15	8	0	217	248	917,621	27.13
Nebraska	1	22	2	4	4	1	0	343	377	1,739,291	21.67



State-by-State Prosecutions of Federal Gun Laws (FY2000-FY2003) *continued*

Statute	FFLs	Lying	Traf.	Oblt	Stolen	Minor	Schools	Felons	Total	Population	Rate
State											
Nevada	2	11	5	3	6	0	0	488	515	2,241,154	22.97
New Hamp.	0	5	0	0	4	0	0	59	68	1,287,687	5.28
New Jersey	1	2	8	6	0	0	1	318	336	8,638,396	3.88
N. Mexico	2	21	4	4	10	2	1	353	397	1,874,614	21.17
New York	17	187	139	32	29	0	0	1,484	1,888	19,190,115	9.83
No. Car.	3	64	33	5	33	0	0	1,626	1,764	8,407,248	20.98
No. Dak.	1	5	1	2	17	0	0	113	139	633,837	21.92
Ohio	4	100	10	5	17	1	0	576	713	11,435,798	6.23
Oklahoma	1	18	8	1	11	0	0	493	532	3,511,532	15.15
Oregon	2	34	6	3	2	0	0	460	507	3,559,596	14.24
Penn.	4	185	50	9	22	1	0	1,100	1,371	12,365,455	11.08
Rhode Isl.	0	11	1	1	1	0	0	98	112	1,076,164	10.4
So. Car.	0	64	7	6	11	0	1	786	875	4,147,152	21.09
So. Dak.	0	11	1	3	9	0	4	93	121	764,309	15.83
Tennessee	7	22	40	7	30	1	16	1,472	1,595	5,841,748	27.3
Texas	6	150	26	15	66	2	2	2,630	2,897	22,118,509	13.09
Utah	1	32	5	16	30	0	0	793	877	2,351,467	37.29
Vermont	0	21	2	2	12	0	0	90	127	619,107	20.51
Virginia	3	86	18	19	41	0	2	1,863	2,032	7,386,330	27.51
Washington	3	50	4	2	5	0	2	385	451	6,131,445	7.35
W. Virginia	3	26	8	2	23	0	0	354	416	1,810,354	22.97
Wisconsin	1	15	11	1	2	0	1	308	339	5,472,299	6.19
Wyoming	0	8	2	5	6	0	0	153	174	501,242	34.71
DC	0	0	9	1	2	0	8	859	879	563,384	156.03
Guam	0	3	0	2	4	1	0	28	38		
N. Nar. Is.	0	0	0	0	2	0	0	5	7		
Puerto Rico	0	4	9	14	2	0	1	116	146		
Virgin Islands	0	0	1	12	0	0	0	43	56		
<b>Total</b>	<b>120</b>	<b>2,128</b>	<b>703</b>	<b>348</b>	<b>758</b>	<b>29</b>	<b>58</b>	<b>32,006</b>	<b>36,150</b>	<b>290,809,777</b>	<b>12.42</b>

## Corrupt gun dealers are rarely prosecuted and prosecutions continue to decline despite evidence of massive violations.

Criminal cases filed against dealers have declined by 11% since 2000, and from 2000 through 2003, federal prosecutors brought only 120 cases under the three statutes that deal with corrupt gun stores. During these four years, dealer prosecutions accounted for less than 1 percent (.32%) of all federal gun prosecutions.

What makes these statistics alarming is that "dirty" federal firearms licensees are the leading source of crime guns recovered in trafficking investigations. According to the most recent data available from the ATF, corrupt dealers were the source of 40,365 illegal guns recovered during a 2-year period in the late 1990s (32.1% of all guns recovered during investigations).<sup>32</sup>

A recent report by the Justice Department's Inspector General indicates that the ATF does not properly inspect federal firearm licensees and take action against those who are identified as breaking the law.<sup>33</sup> During 2002, the ATF found violations during 1,934 inspections and documented a total of 134,832 violations. In 2003, the ATF inspected 1,812 licensees and found an average of 80 violations per inspection.

### Prosecutions Involving Corrupt Dealers– FY 2000-2003

2000	36 cases
2001	25 cases
2002	27 cases
2003	32 cases

AGSF does not advocate charging every gun dealer found to have violated record-keeping requirements or other rules with a crime, but when a pattern of criminal activity is uncovered during an inspection, the dealer should be prosecuted. The Justice Department Inspector General's report uncovered instances where highly suspicious patterns of activity discovered during inspections were not referred to the criminal division for further investigation. In one case, an inspection in 2002 revealed that a dealer was missing 40 firearms from inventory, that illegal sales had been made to out-of-state purchasers, and sales records were missing, but a referral was never made. The dealer operated for more than a year before a separate investigation based on information from a confidential informant resulted in the dealer's arrest.<sup>34</sup>

[32] *Commerce in Firearms in the United States*, Bureau of Alcohol, Tobacco, Firearms and Explosives, February 2000, p. 25.

[33] *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Department of Justice, Office of Inspector General, (Report Number I-2004-005), July 2004.

[34] *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Department of Justice, Office of Inspector General, (Report Number I-2004-005), July 2004.

### ***A Closer Look: Federal Statutes Related To Licensed Firearm Dealers***

**18 USC 922(m):** Prohibits a federally licensed dealer from making a false entry in, failing to make an entry in or failing to properly maintain records relating to firearm sales.

**18 USC 922(b):** Prohibits a federally licensed dealer from selling to a prohibited person, delivering a firearm to a person residing in another state or disposing of a firearm without keeping appropriate records.

**18 USC 924(a)(3):** Requires federally licensed dealers to complete and maintain records.

AGSF obtained ATF inspection data covering the period from January 1, 2000 to May 31, 2003. During that time, ATF conducted 16,611 inspections of licensed gun dealers. In 40% of those inspections, the ATF found violations of federal law.<sup>35</sup>

Major retailers such as Wal-Mart, K-Mart, Big 5 and Sports Authority were found to have even higher rates of violations than other firearm licensees. Violations were identified during 80.8% of inspections at K-Mart stores, 72.9% of inspections at Wal-Mart, 63.6% of inspections at Big 5 and 50.9% of inspections at Sports Authority.<sup>36</sup>

Although violations of the criminal law were found in 40 out of every 100 compliance inspections, only 2 in every 100 inspections in which violations are identified lead to prosecutions.<sup>37</sup> The data also revealed that federal prosecutors bring few cases against gun dealers in states previously identified as major sources

of trafficked firearms. U.S. Attorney's offices in Alabama, Louisiana, Mississippi and South Carolina brought no criminal cases against dealers who were discovered breaking the law over the last four years. In Ohio, only 1 in every 100 inspections in which violations are identified leads to a federal prosecution.<sup>38</sup>

According to the ATF, record-keeping violations are the most common compliance problem identified during dealer inspections. In some cases, these violations may be inadvertent, and most probably are not a part of any plan to sell guns to illegal buyers. In other cases, however, record-keeping issues can be a red flag indicating that the dealer is diverting firearms to illegal markets or, at a minimum, is careless about keeping track of guns. In fact, record-keeping violations were found in almost 50 percent of the trafficking investigations involving dealers.

Brian Borgelt, the firearm dealer who operated Bull's Eye Shooters Supply, the source of the

[35] Information concerning firearm dealer inspection and violation data was obtained from the Bureau of Alcohol, Tobacco, Firearms and Explosives through a Freedom of Information Act Request (Request #03-2038122000). The data covers inspections conducted between January 1, 2000 and May 31, 2003.

[36] Information concerning firearm dealer inspection and violation data was obtained from the Bureau of Alcohol, Tobacco, Firearms and Explosives through a Freedom of Information Act Request (Request #03-2038122000).

[37] Ibid.

[38] Ibid.

rifle used in the Washington, D.C., sniper shootings in 2002, had a long history of paperwork violations, and many of his store's guns ended up in the hands of criminals. Between 1997 and 2001, firearms sold by Bull's Eye were involved in 52 crimes – including homicides, kidnappings and assaults.<sup>39</sup>

Bull's Eye was cited for at least 15 violations during inspections from 1998 to 2002.<sup>40</sup> Violations included failure to record the sale of a firearm at a gun show; multiple failures to produce sales records for firearms no longer in inventory; and failure to report thefts in a timely manner. In one inspection, the ATF found that Borgelt could not provide sales documentation for 421 firearms.<sup>41</sup> Despite these violations, Borgelt was allowed to keep operating his business until the rifle used in the Washington, D.C., shootings was found to be missing from his inventory and a subsequently audit revealed numerous other violations.<sup>42</sup> Bull's Eye recently agreed to pay \$2 million to settle a negligence suit arising from the sniper case.

Even in situations where a dealer is not knowingly selling guns to criminals or other prohibited purchasers, the failure to keep accurate records can make it impossible for the ATF and other law enforcement agencies to investigate gun crimes. Most trafficking cases are identi-

fied through data collected by the ATF through gun dealers.<sup>43</sup> That data includes crime gun traces, firearm and multiple sale forms, background check forms and dealer firearm theft reports. Dealer records are essential for law enforcement to trace crime guns back to their original purchasers. In combination with other investigative techniques, this information allows law enforcement to unravel gun trafficking and straw purchasing schemes that supply the black market.

Federal prosecutors may be reluctant to prosecute violations by gun dealers because they are almost always categorized as misdemeanors – with maximum imprisonment of less than one year – even where a dealer has intentionally falsified records. In addition, past attempts by the ATF to adopt more aggressive enforcement tactics against dealers who break the law have been met with heavy resistance from firearm retailers and their allies in Congress.<sup>44</sup>

More attention to enforcement against dirty dealers should be a priority because these people "can put guns in the hands of criminals fastest and in the greatest number."<sup>45</sup> The vast majority of federal firearms licensees are honest, but the unwillingness to crack down on dealers who fail to live up to their legal obligations is a serious problem.

[39] *Errant gun dealer, wary agents paved way for Beltway sniper tragedy*, Carter, Mike; Miletich, Steve; and Mayo, Justin; The Seattle Times, April 29, 2003, p. A1.

[40] *Ibid.*

[41] *Ibid.*

[42] *Ibid.*

[43] *Implementing a Firearms Trafficking Strategy – Prosecuting Corrupt Federal Firearm Licensees*, Reinhart, Bruce, United States Attorney's Bulletin, January 2002, Vol. 50, No. 1 p. 42.

[44] With NRA support, the Firearm Owner Protection Act signed into law in 1986 restricted inspections of licensed firearm dealers to once a year and only required individuals who sold firearms as "a regular course of trade or business with the principal objective of livelihood" to obtain a license. See Erik Larson, *Lethal Passage: The Story of a Gun*, Vintage Books Edition, January 1995, pp. 121-57 (reviewing history of ATF's efforts to crack down on dirty dealers and obstacles to more aggressive enforcement).

[45] See footnote 43.

## Corrupt Gun Dealers

Statute State	2000			2001			2002			2003			TOTAL
	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	
Alabama													0
Alaska													0
Arizona		2		1			1			2			6
Arkansas													0
California	1	1			1								3
Colorado		2		1	1					1			5
Conn.													0
Delaware													0
Florida	1	7	1				4			1	2		16
Georgia			1			1							2
Hawaii													0
Idaho													0
Illinois		1			1					4			6
Indiana		1					1			3			5
Iowa													0
Kansas			1										1
Kentucky		1			2		2			1			6
Louisiana													0
Maine				2									2
Maryland													0
Mass											1		1
Michigan													0
Minnesota	1												1
Mississippi													0
Missouri		2										1	3
Montana										1			1
Nebraska										1			1
Nevada			1							1			2

### LEGEND

**922(m):** Failure to keep accurate records

**924(b):** Sale of illegal gun or ammunition to prohibited buyer

**924(a)(3):** False statements



Statute State	2000			2001			2002			2003			TOTAL
	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	
New Hamp.													0
New Jersey									1				1
N. Mexico									1			1	2
New York			7			8			2				17
No. Car.		1			1					1			3
No. Dak.									1				1
Ohio					2		1			1			4
Oklahoma				1									1
Oregon							1			1			2
Penn.	1	1						2					4
Rhode Isl.													0
So. Car.													0
So. Dak.													0
Tennessee								4		1	2		7
Texas						1		1	2		2		6
Utah												1	1
Vermont													0
Virginia								2			1		3
Washington				1				1			1		3
W. Virginia		1				1					1		3
Wisconsin		1											1
Wyoming													0
DC													0
Guam													0
Puerto Rico													0
<b>Totals</b>	<b>4</b>	<b>21</b>	<b>11</b>	<b>6</b>	<b>8</b>	<b>11</b>	<b>3</b>	<b>17</b>	<b>7</b>	<b>6</b>	<b>22</b>	<b>4</b>	<b>120</b>

**LEGEND**

**922(m):** Failure to keep accurate records

**924(b):** Sale of illegal gun or ammunition to prohibited buyer

**924(a)(3):** False statements



## Hundreds of thousands of felons and other prohibited purchasers “lie and try” to buy guns – but almost none get prosecuted for it.

“Philadelphia Police Commissioner Sylvester M. Johnson has said that “straw sales” are contributing to a flood of guns into Philadelphia and to the city’s murder rate. Last year’s rate was 23 per 100,000 residents, among the highest of any big city.”<sup>46</sup>

The Brady Act requires firearms purchasers to submit to a background check to determine their eligibility to possess a firearm. Applicants must attest on a document known as Form 4473 that they are buying the gun for themselves and not for someone else, are not under indictment for a felony crime, have never been convicted of a felony crime, are

not a fugitive from justice, are not addicted to a controlled substance, have never been committed to a mental institution, have not been dishonorably discharged from the armed forces, are not in the country illegally, have not renounced their citizenship, are not under a restraining order and have not been convicted of a crime of domestic violence.

### Individuals who lie on firearm purchase background check forms are not targeted for prosecution under the federal government’s crime gun initiative.

- Attorney General Ashcroft has repeatedly called for more federal prosecutions of individuals who lie on firearm purchase background check forms, but in 2003, the number of these prosecutions actually declined by 8%.
- In 2003, 8 states saw the number of prosecutions for lying on the firearm purchase background check form decrease by more than 50%. Those states include: Nevada (83%), Colorado (80%), California (77%), Illinois (71%), New Mexico (60%), Iowa (58%), New Jersey, and North Dakota (100%).

[46] *Philadelphia seen as a hotbed of illegal gun trafficking*, Gorenstien, Nathan, Philadelphia Inquirer, August 9, 2004.

### ***Promising Practice: Networking with Firearm Dealers To Identify and Stop Straw Purchasers***

The U.S. Attorney's Office for the Western District of Pennsylvania has developed a partnership with the ATF and local gun dealers to help identify straw purchasers. Firearm dealers immediately inform ATF when they suspect a straw purchaser has tried to buy a gun in their store. Local dealers also have developed a straw purchase warning network where a dealer who declines to sell a gun based on suspicions that the purported buyer is a straw purchaser notifies other dealers in the area to be on the lookout for the buyer. Dealers suspected of turning a blind eye to straw purchasers have become targets of criminal investigations. While prosecutions of individuals lying on the firearm purchase background check form increased modestly between 2001 and 2002, from 3 to 8, just after this program was announced, prosecutions declined to 5 in 2003. Despite the small number of prosecutions, AGSF believes that partnering with firearm dealers to prevent straw purchases has the potential to prevent firearms from falling into the hands of criminals.

A buyer who provides false information on the purchase form can be prosecuted for "making a false oral or written statement," which is punishable as a felony.<sup>47</sup> Therefore, criminals often have "straw purchasers" – a friend, relatives, or girlfriend, for example – buy guns for them. Last year in Philadelphia, women purchased almost a quarter of the guns recovered by law enforcement during criminal investigations less than a year after

the firearms were sold. Local law enforcement and firearm dealers believe many of these women are the girlfriends of felons who are barred from purchasing or owning a firearm.<sup>48</sup>

The people who agree to make straw purchases may not think of themselves as committing a serious crime, but they are putting guns directly into the hands of criminals.<sup>49</sup>

[47] ATF, Form 4473-Firearms Transaction Record – Part 1 – Over the Counter.

[48] *Details of guns tied to city crimes*, Gorenstien, Nathan, The Philadelphia Inquirer, August 29, 2004, p. B01.

[49] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Kraft, Mark, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 8.

### ***A Closer Look: Federal Laws Regarding Lying on Firearm Purchase Background Check Forms***

**18 USC 922(a)(6):** Prohibits making materially false statements to a licensed firearm dealer to obtain or attempt to obtain a firearm.

**18 USC 924(a)(1)(A):** Prohibits making false statements or representations in a firearm dealer's required records or in applying for a license or relief from disabilities.

In June 2001, the Attorney General directed all U.S. Attorneys to put a high priority on prosecuting individuals who lie on background check forms for firearm purchases, because "even though these individuals do not succeed in obtaining a gun, they have committed a separate federal crime. We want them to know if they even try, we will prosecute."<sup>50</sup>

A review of the prosecution data over the last four years, however, shows that the Attorney General's directive was ignored. In fact, during 2003, prosecutions of individuals lying on

the firearm purchase background check from actually decreased by 8% to a paltry 532 cases. In 5 states, the number of lying on the firearm purchase background check form prosecutions decreased by more than 50 percent: Nevada (prosecutions declined from 6 to 1 (83%)), Colorado (prosecutions declined from 15 to 3 (80%)), California (prosecutions declined from 18 to 4 (77%)), New Mexico (prosecutions declined from 5 to 2 (60%)) and Michigan (prosecutions declined from 6 to 3 (50%)).

**"Today I am directing all U.S. Attorneys, in consultation with ATF and the Executive Office of U.S. Attorneys, to review and report the progress on my directive in June 2001 to pursue more "lie and try" cases – where criminals lie about their past criminal convictions and are denied a gun sale because a Brady background check catches their lie. Even though these individuals do not succeed in obtaining a gun, they have committed a separate federal crime. We want them to know if they even try, we will prosecute."<sup>51</sup>**

*- Attorney General John Ashcroft – February 7, 2003.*

[50] Prepared Remarks of Attorney General Ashcroft at the Project Safe Neighborhoods National Conference, Philadelphia, PA January 30, 2003. See, <http://www.psn.gov/News.asp?FormMode=release&ID=80>.

[51] Ibid.



**Prosecutions For Lying on  
Firearm Purchase Background  
Check Form – FY 2000-2003**

2000	501
2001	515
2002	578
2003	532

From 2000 through 2003, roughly 566,000 applicants were rejected from buying a firearm after signing the form certifying that they were not in a category of prohibited purchasers.<sup>52</sup> The denied applicants included 317,000 convicted felons,<sup>53</sup> 85,000 domestic abusers or people subject to a restraining order,<sup>54</sup> and 32,000 people with outstanding arrest warrants.<sup>55</sup>

Yet even with more than half a million cases to choose from, federal prosecutors charged only 2,126 people with violating Sections 922(a)(6) or 924(a)(1)(A). This means that for every 1,000 applicants who committed the felony of making a false statement in an attempt to obtain a firearm, less than 4 people were prosecuted – even though federal law enforcement had

the name, address, and in some cases the Social Security number of the applicant printed on the background check form.

## Even When Felons Succeed in Buying a Gun, Prosecutions Are Rare

In many cases, lying works – at least temporarily. During 2003, firearms were transferred to 3,601 buyers who were later found by the FBI to be prohibited purchasers who lied on the background check form. Over the last five years, the ATF estimates that it has retrieved 20,000 firearms from individuals who lied on the background check form and obtained a firearm.<sup>56</sup> This generally happens because when a background check takes more than three days, the Brady Act permits gun dealers to complete the sale of the firearm even though the results are not yet known.

Over 75% of the firearms transferred to people who were later found to be ineligible to purchase a gun wound up in the possession of buyers who were convicted of or under indictment for one or more felonies, convicted of domestic violence misdemeanors, or fugitives from justice.<sup>57</sup> According to a report by the Justice

[52] *Background Checks for Firearm Transfers, 2003*, Bureau of Justice Statistics, September 2004.

[53] Ibid. See also, *Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Enforcement of Brady Act Violations Identified Through the National Instant Criminal Background Check System*, (Report Number I-2004-006), U.S. Department of Justice, Office of the Inspector General Evaluation and Inspection Division, July 2004, page 5. [54] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Kraft, Mark, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 8.

[54] Ibid.

[55] Ibid.

[56] *Background Checks for Firearm Transfers, 2003*, Bureau of Justice Statistics, U.S. Department of Justice, September 2004.

[57] Ibid. p. 6.

Department's Inspector General, the ATF usually sends buyers who are later identified as prohibited purchasers a letter requesting that the buyer dispose of the firearm. In slightly more than half of these cases the prohibited person promptly disposed of the firearm upon receiving the letter – or at least that's what they told the ATF.<sup>58</sup>

Not every buyer who provides false information on the background check form is likely to be a good candidate for prosecution, but there is no excuse for ignoring hundreds of thousands of people who try to get guns by lying during the background check.

#### ***Promising Practice: Don't Lie for the Other Guy***

Several judicial districts are participating in the "Don't Lie for the Other Guy" program, which is designed to assist firearm dealers in identifying and deterring straw purchasers. The program was developed by the National Shooting Sports Foundation and has recently been adopted by all three U.S. Attorneys in Louisiana after being implemented by U.S. Attorneys in Mississippi and New York.

AGSF believes that educating firearm dealers to detect straw purchasers is important, but it must be matched with vigorous enforcement of the law. AGSF was encouraged when James Letten, the U.S. Attorney in New Orleans, announced that he had adopted a "zero tolerance" policy toward people who lie on background checks to buy guns. Letten was quoted in the Times-Picayune newspaper on May 15, 2003, as saying: "I've met with the ATF and said our office would gladly prosecute anyone who committed a provable lie on a federal form, whether they were successful in getting firearms or not." Unfortunately, this policy appears to have generated only a modest increase in the number of lie-and-try cases filed by Letten's office. Prosecutions for individuals lying on the firearm purchaser background check form increased from 2 in 2001 to 6 in 2002 and 11 in 2003. This trend represents a move in the right direction, but the total number of prosecutions remains small relative to the 2,951 instances when buyers were found to have lied on the firearm purchase background check form in Louisiana during 2003.

[58] Ibid.

## Lying on Background Check Form

Statute State	2000		2001		2002		2003		Total
	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	
Alabama			3		7	2	10	4	26
Alaska	2		1				1		4
Arizona	4		3		5	7	6	10	35
Arkansas	2	1	7	2	9		5		26
California	19	3	29	5	16	2	4		78
Colorado	8		11	6	11	4	3		43
Conn.							1		1
Delaware			2		11	1	6		20
Florida	36	1	31	6	24	15	27	19	159
Georgia	10	8	6	16	7	22	7	27	103
Hawaii									0
Idaho			2	1	1		4	1	9
Illinois	8	3	5	7	5	2	2		32
Indiana	13	2	24	3	32	16	14	11	115
Iowa	4		1		7		2	1	15
Kansas	4		4	1	4		5		18
Kentucky	14		7	3	18	4	15	1	62
Louisiana	19	2	19		11		15	1	67
Maine	7		4	1	13	2	10		37
Maryland	5	1		1	4		2	1	14
Mass	4		2		4		2		12
Michigan	6	1	5		4	2	2	1	21
Minnesota	2	3	3	2	1	1	4		16
Mississippi	3		7	3	5	1	7	2	28
Missouri	4	2	3	2	6	3	3	2	25
Montana			1		2		2		5
Nebraska	4		4	1	5		7	1	22

### LEGEND

**922(a)(6): false statements on firearm purchase form**  
**924(a)(1)(A): false statement to a dealer**

Statute State	2000		2001		2002		2003		Total
	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	
Nevada	4				5	1	1		11
New Hamp.	2		1			1	1		5
New Jersey						2			2
N. Mexico	6	4	3	1	2	3		2	21
New York	13	25	6	62	10	44	9	18	187
No. Car.	14	3	10	6	12	2	14	3	64
No. Dak.	1		2		2				5
Ohio	11	14	17	6	27	4	15	6	100
Oklahoma	5		4		3	3	2	1	18
Oregon	10		8		8	1	7		34
Penn.	28	29	15	24	14	26	9	40	185
Rhode Isl.	1				6		4		11
So. Car.	14		10		21	3	15	1	64
So. Dak.	4		5		1		1		11
Tennessee	5		6	1		2	7	1	22
Texas	47	3	40	1	22	3	27	7	150
Utah	4				3		21	4	32
Vermont	4		5	3	3		6		21
Virginia	10	3	11	12	6	8	20	16	86
Washington	18		4		15		13		50
W. Virginia	7	1	2	2	4	5	4	1	26
Wisconsin	2		2	2	1	4	4		15
Wyoming	3				3		2		8
DC									0
Guam					1		1	1	3
Puerto Rico	1				1	2			4
<b>Totals</b>	<b>392</b>	<b>109</b>	<b>335</b>	<b>180</b>	<b>382</b>	<b>198</b>	<b>349</b>	<b>183</b>	<b>2,128</b>

## Despite a massive black market in crime guns, the five major laws to combat gun trafficking are virtually ignored.

“With Philadelphia's murder pace stuck at six deaths every seven days – most from gunshot wounds - police say part of the blame rests with people such as Maurice Jackson. In 2001, Jackson, a city resident who had no arrest record, went to four area gun shops and bought nine semiautomatic handguns in just 10 days. That was perfectly legal. Then he turned them over to a fellow Philadelphian, Tarum Gibbs, who had a record of drug and firearms violations dating back a decade. That was illegal, and Jackson, 25, admitted in federal court that he was what police call a "straw purchaser" - someone who buys guns and then resells them on the street.”<sup>59</sup>

### Federal prosecutors ignore the five major firearm laws designed to combat trafficking despite a massive black market for guns

- More than 300,000 gun crimes showed telltale signs of trafficking, but the five statutes that single out these indicators were almost never used – a total of 703 cases from 2000 to 2003 (consisting of less than 2% of all federal firearm prosecutions).
- The ATF found that 89% of the guns it traced to crime had changed hands at least once before being recovered by police.
- In 2003, the number of trafficking cases decreased by almost 5% from 2002 levels.
- Between 2000 and 2003, five states accounted for just over 43% of all trafficking prosecutions. These states include: New York, Pennsylvania, Kentucky, Tennessee and Georgia.
- Six of the 42 states with gun trafficking prosecutions in 2003 saw trafficking cases drop by 50% or more from the previous year. These states include: California (86%), Arkansas (75%), Massachusetts (67%), Nevada (50%), New Jersey (50%) and Wisconsin (50%).

The ATF defines “firearms trafficking” as “the illegal diversion of legally owned firearms from lawful commerce into unlawful commerce, often for profit.”<sup>60</sup> Since the 1993 enactment of the Brady Law, which requires federal firearm dealers to conduct background checks prior to completing the sale of a firearm, criminals have had to rely on the illegal markets to obtain firearms. According to the ATF, nearly 90% of firearms recovered in crime were used by persons who were not the original purchasers.<sup>61</sup>

A recent analysis of handguns traced in 1999 that were recovered within three years of being sold by a licensed firearms dealer indicates the chances that a person arrested with a gun will turn out to be the original purchaser varies depending on the offense that led to the arrest. Only 12% of the handguns traced in relation to a homicide were used by the original purchaser of the firearm.<sup>62</sup> More than 25% of the handguns successfully traced in connection with assault and robbery offenses were recovered from the original purchaser.<sup>63</sup>

The Attorney General has repeatedly stated that one of PSN’s main objectives is to keep guns out of the hands of criminals by targeting firearm traffickers. Prosecution data, however, indicate that investigating and prosecuting trafficking cases are low priorities for federal prosecutors. Last February, the Attorney General instructed the ATF to coordinate trafficking investigations that cross state lines. Instead of increasing the number of trafficking cases, the

Prosecutions For Firearms Trafficking – FY 2000-2003	
2000	141
2001	177
2002	197
2003	188

number of cases filed with charges closely associated with trafficking actually fell by almost 5% in 2003 to only 188.

The ATF reports that almost 45% of its gun trafficking investigations involve firearms that are transported across state lines, but only fourteen cases were brought under Section 924(n), which prohibits crossing state lines to purchase a firearm with the intent to resell, over the past four years.<sup>64</sup> Last year, not a single 924(n) case was filed in the 10 known firearm trafficking source states: Florida, Georgia, Indiana, Louisiana, North Carolina, Ohio, South Carolina, Tennessee, Texas and Virginia. Likewise, not even one 924(n) case was filed last year in any of the five jurisdictions that are inundated with out-of-state crime guns: Illinois, Michigan, Massachusetts, New Jersey and the District of Columbia. Florida, the largest source state for firearms recovered in the Northeast, has seen trafficking prosecutions decline by 30% over the past four years.

[60] *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, June 2000.

[61] *Crime Gun Trace Reports (1999)*, Bureau of Alcohol, Tobacco and Firearms, November 2000.

[62] *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, Cook, Philip J. and Braga, Anthony J., Terry Sanford Institute of Public Policy, Duke University, February 2001.

[63] *Ibid.*

[64] *Following the Gun: Enforcing Federal Laws Against Firearm Trafficking*, Bureau of Alcohol, Tobacco, Firearms and Explosives, June 2000, page5.

### ***A Closer Look: The Five Federal Statutes that Address Gun Trafficking***

**Sections 922(a)(1)(A) and 924(n)** of the U.S. criminal code are the "two most straightforward trafficking offenses," according to ATF. Section 922(a)(1)(A) prohibits any person from engaging in the business of selling firearms unless that individual has a federal firearms license. Section 924(n) bars anyone from crossing state lines to purchase a firearm with the intent to resell it. ATF states that when these two statutes are not available, alternative charges are brought, including charges under Sections 922(d), 924(g), and 924(h).

**Section 922(d)** prohibits any individual from selling a firearm to a person whom they know or have reason to know is a criminal or other prohibited buyer.

**Section 924(g)** prohibits traveling across state lines to acquire, attempt to acquire or transfer a firearm in another state in furtherance of engaging in a drug crime.

**Section 924(h)** prohibits knowingly transferring a firearm to an individual for the purposes of committing a crime of violence or drug trafficking crime.

**"I'm directing the Criminal Division, ATF, and other appropriate Department components to establish procedures for coordinating the investigation and prosecution of illegal gun trafficking cases that cross state and district boundaries."<sup>65</sup>**

*- Attorney General John Ashcroft*

[65] Prepared Remarks of Attorney General Ashcroft at the Project Safe Neighborhoods National Conference, Philadelphia, PA, January 30, 2003. See, <http://www.psn.gov/News.asp?FormMode=release&ID=26>.



With the exception of Pennsylvania, Kentucky, Tennessee and Georgia, the federal laws designed to prevent the illegal diversion of firearms to criminals have not been

enforced at all. Only a few U.S. Attorneys appear to have heeded Attorney General Ashcroft's exhortation to prosecute more gun trafficking cases.

***Promising Practice: Network With Other U.S. Attorneys To Combat Interstate Firearm Trafficking***

The U.S. Attorney For the Southern District of New York has coordinated the development of the "Iron Pipeline Working Group" made up of prosecutors from U.S. Attorneys' offices in Florida, Georgia, North Carolina, South Carolina and Virginia. These states are the leading source states for firearms used in crime in New York. The working group helps coordinate investigations and assists in building cases against suspected firearms traffickers. The Southern District of New York leads the nation in prosecuting firearm traffickers. This collaboration among United States Attorneys has led to 68 trafficking cases being filed in the Eastern District of New York between 2001 and 2003 and accounts for 12% of all trafficking cases filed during that time.

**"An immigrant from Kazakhstan who sold 37 guns to undercover officers in the Bronx and Queens over the past year was arrested yesterday on charges of weapons trafficking, the police said. The suspect, Serguei Volochenko, met with officers several times, always armed, and once pulled his gun in an argument over money, the police said. He also volunteered his services as a hit man and offered the use of his boat to dispose of murder victims. He was arrested at his apartment in Queens, where officers found five weapons, one loaded gun and 1,300 rounds of ammunition. The detectives purchased 31 handguns, two shotguns, two rifles and two machine pistols over the course of the investigation."**<sup>66</sup>

[66] "Arrest In Gun Trafficking," New York Times, Michael Wilson, June 23, 2004, p. section B; column 5.

## Illegal Trafficking Statutes

Statute State	2000					2001				
	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)
Alabama						1	1			
Alaska	1									
Arizona	1					4				
Arkansas										
California	5	2		1		9	2			
Colorado	1						2			
Conn.	4					1				
Delaware										
Florida	3	4	2	1		5	1	1	1	
Georgia	4			1	1	12				
Hawaii							1			
Idaho										
Illinois	6	1	1			3	2			
Indiana	1					3			1	
Iowa										
Kansas			3			1		1		
Kentucky	3				1	18	1	2		1
Louisiana			1			1				
Maine								1		
Maryland	1	2		1						
Mass	1	2				5	1			
Michigan	2	1				2				
Minnesota	2									
Mississippi		1								
Missouri	1					2		2		1
Montana										
Nebraska										

### LEGEND

**922(a)(1)(A): require firearm license**

**922(d): sell to prohibited person**

**924(g): cross state lines to obtain firearm in furtherance of drug crime**

**924(h): transferring firearm in furtherance of drug crime**

**924(n): cross state lines to sell firearms without license**

Statute State	2002					2003					Total
	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)	
Alabama	2					2	1	2			9
Alaska				1							2
Arizona	3					4		1	1		14
Arkansas	3	1				1					5
California	7						1				27
Colorado	1					1					5
Conn.	3					2				1	11
Delaware		2									2
Florida	4	2				4	3				31
Georgia	7		1			4	2	2			34
Hawaii											1
Idaho							1			1	2
Illinois	3					4	2		1		23
Indiana							1				6
Iowa	1	1									2
Kansas						2	3	1			11
Kentucky	3	3				7	1	1			41
Louisiana		1					1				4
Maine	1								1		3
Maryland						2					6
Mass	5				1	2					17
Michigan		1				3	1				10
Minnesota		1				1					4
Mississippi		1	1								3
Missouri	4					9		1			20
Montana											0
Nebraska		1	1								2

### Illegal Trafficking Statutes...continued

Statute State	2000					2001				
	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)
Nevada	1					1				
New Hamp.										
New Jersey	4					1				
N. Mexico						1				
New York	21	1	1	3	1	31	2	1		1
No. Car.	4					7	1	2		
No. Dak.										
Ohio	1		2			1	2	1		
Oklahoma	1	1								
Oregon										
Penn.	12	3	1			4	1			
Rhode Isl.	1									
So. Car.						2				
So. Dak.								1		
Tennessee	5	1				1				
Texas	6		1			5				
Utah	1					1				
Vermont							1			
Virginia	2					2	2		1	
Washington										
W. Virginia						1	1			
Wisconsin	3					2				
Wyoming				1		1				
DC						2	1		3	
Guam										
Puerto Rico	1					3				1
Virgin Islands										
<b>Totals</b>	<b>99</b>	<b>19</b>	<b>12</b>	<b>8</b>	<b>3</b>	<b>133</b>	<b>22</b>	<b>12</b>	<b>6</b>	<b>4</b>

Statute State	2002					2003					Total
	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)	922(a)(1)(a)	922(d)	924(g)	924(h)	924(n)	
Nevada		1	1				1				5
New Hamp.											0
New Jersey	2					1					8
N. Mexico	1							2			4
New York	41		1		1	32		1		1	139
No. Car.	7	1	1			7	2		1		33
No. Dak.	1										1
Ohio	3										10
Oklahoma	2	1				1	1	1			8
Oregon	1		1	1		1	2				6
Penn.	13					12	4				50
Rhode Isl.											1
So. Car.	1				1	1	2				7
So. Dak.											1
Tennessee	18	3				2	9	1			40
Texas	2		4			2	3	1	2		26
Utah		1				1	1				5
Vermont						1					2
Virginia	5	1				4	1				18
Washington			1			3					4
W. Virginia	3	2	1								8
Wisconsin	1	3				2					11
Wyoming											2
DC	2								1		9
Guam											0
Puerto Rico					1				1		9
Virgin Islands					1						1
<b>Totals</b>	<b>152</b>	<b>27</b>	<b>13</b>	<b>2</b>	<b>3</b>	<b>120</b>	<b>43</b>	<b>14</b>	<b>7</b>	<b>4</b>	<b>703</b>

## For every 1,000 stolen firearms recovered by law enforcement, only five federal prosecutions are brought.

“In December 2001, a small firearms dealer in a rural area of Utah was burglarized. Fifteen handguns were stolen. The two individuals responsible for the burglaries have been apprehended and face federal firearms charges. To date, 10 of the 15 firearms have been recovered. Of the firearms recovered, all were found in the hands of prohibited persons. Many have been used in crimes.”<sup>67</sup>

### Only 5 federal prosecutions are brought for every 1,000 stolen firearms recovered by law enforcement

- Between 2000 and 2003, federal gun prosecutions involving stolen firearms increased by 58%
- Although prosecutions are increasing, stolen firearm prosecutions accounted for slightly more than 2% of all federal firearm prosecutions between 2000 and 2003.

### ***A Closer Look: Federal Firearm Laws Related To Stolen Firearms***

**18 USC 922(i):** Forbids transportation or shipping of stolen firearm in interstate commerce.

**18 USC 922(j):** Makes it a crime to receive, possess, conceal, store, barter, sell or dispose of a stolen firearm that has been removed from interstate or foreign commerce.

**18 USC 922(u):** Prohibits theft of a firearm from the inventory of a licensed firearms dealer where the gun has been in interstate or foreign commerce.

**18 USC 924(l):** Outlaws theft of a firearm that has traveled in interstate or foreign commerce.

**18 USC 924(m):** Makes it a crime to steal a firearm from a licensed dealer (no interstate commerce element required).

The Justice Department acknowledges that “stolen firearms represent a huge problem.”<sup>68</sup> An ATF report on firearms trafficking indicated that almost 20 percent of the agency’s firearm trafficking investigations involved the possession, receipt, or trafficking of stolen firearms.<sup>69</sup> The total value of firearms reported stolen during the last four years is over \$370 million.<sup>70</sup> The FBI maintains a list of the make, model and serial number of every gun reported stolen to police, and approximately 1.7 million firearms have been added to the FBI’s Stolen Gun File Registry in the last ten years alone. It is easy for law enforcement to check each gun recovered in a crime to see if it is stolen. By bringing more charges against people caught with stolen guns, prosecutors could

get longer sentences, get leverage to convince suspects to lead investigators to the source of stolen guns, and return stolen property to the rightful owners.

During the period covered by this report,<sup>71</sup> approximately 560,000 firearms were reported stolen. Of these guns, approximately 139,000 were eventually returned to their rightful owners. During the same period, federal prosecutors brought only 758 charges for possession, sale, transport, or shipping of a stolen gun under these five statutes. That translates to slightly more than five prosecutions for every 1,000 firearms reported stolen to law enforcement and subsequently returned to their owners.

[68] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Kraft, Mark, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 9.

[69] *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, June 2000, page. 27.

[70] Federal Bureau of Investigation, Crime in the United States: 2002, Uniform Crime Reports, Crime Offenses Reported – Table 24: Property Stolen and Recovered.

[71] Federal Bureau of Investigation, Stolen Gun File Registry (through August 2002). 2003 data estimated based on data from previous years.



Federal prosecutions involving stolen firearms charges have gone up under Project Safe Neighborhoods, but the total number of these cases is still small. Between 2000 and 2003, federal prosecutions involving stolen firearms increased 58%, rising from 148 to 243. Despite the increased levels of prosecutions between 2000 and 2003, prosecutions for cases involving stolen firearms only accounted for only 2.1% of all federal firearm prosecutions.

Stolen Firearm Prosecutions FY 2000-2003	
2000	148 cases
2001	174 cases
2002	202 cases
2003	234 cases

#### ***Promising Practice: Identifying Stolen Firearms and the Individuals Who Supply Them To Criminals***

The United States Attorney For the Western District of Tennessee requires all local law enforcement agencies that participate in Project Safe Neighborhoods to check all crime guns recovered by law enforcement through the National Crime Information Center (NCIC) stolen firearm database. This national database contains identifying information (such as owner, serial number, make and model) of all firearms reported stolen. According to PSN materials, checking all firearms through the NCIC database and reviewing police reports related to the recovery of stolen firearms, lead to the identification of individuals who were providing stolen firearms to felons. The additional benefit of this activity is that the stolen firearm is reunited with its lawful owner.



## Stolen Firearms

Statute State	2000					2001				
	922(i)	922(j)	922(u)	924(l)	924(m)	922(i)	922(j)	922(u)	924(l)	924(m)
Alabama	4	1					7			
Alaska				1						
Arizona	1	3					5	1		1
Arkansas		1								
California		1					2		2	
Colorado		2								
Conn.					1		1			
Delaware										
Florida		5				1	5	4		1
Georgia		6						3		
Hawaii										
Idaho		1								
Illinois							1	3		
Indiana		1					2			
Iowa	4	1	1				6	4		
Kansas							2			
Kentucky	3	3				2	3	2	2	
Louisiana		3	1			1	2			
Maine							3			
Maryland		1					4			
Mass					2		3			
Michigan		6					2	1		
Minnesota		2					1			
Mississippi		5		2			2			1
Missouri		3			2		3	2	1	
Montana	1	1							1	
Nebraska		1								

### LEGEND

**922(i): interstate transport of stolen firearms**

**922(j): possession of stolen firearms**

**922(u) and 924(m): theft from dealer**

**924(l): theft of firearm that was transported interstate**

Statute State	2002					2003					Total
	922(i)	922(j)	922(u)	924(l)	924(m)	922(i)	922(j)	922(u)	924(l)	924(m)	
Alabama		10	1				3				26
Alaska				1			2	1	1		6
Arizona		6	2				3	3			25
Arkansas		3		1			1	1			7
California		6					3				14
Colorado		1	1								4
Conn.		2					3				7
Delaware		1									1
Florida		4	1					1			22
Georgia		2	1	1			3		1		17
Hawaii											0
Idaho									1		2
Illinois		6		1			2		1		14
Indiana		6				1	5				15
Iowa							4	1			21
Kansas		1	3			1	6	1			14
Kentucky		4	1		2	3	8			2	35
Louisiana		6				1	2				16
Maine					1		7	1			12
Maryland		1					1				7
Mass						1	2			1	9
Michigan		4				1	6	1			21
Minnesota		2	1				1	1			8
Mississippi			1				1	2			14
Missouri		3	1	1	1		5	2		1	25
Montana		2					10				15
Nebraska		2					1				4

### Stolen Firearms...continued

Statute State	2000					2001				
	922(i)	922(j)	922(u)	924(l)	924(m)	922(i)	922(j)	922(u)	924(l)	924(m)
Nevada										
New Hamp.	3									
New Jersey										
N. Mexico	1						2			
New York		4					4			1
No. Car.	1	4	1			1	3	1		
No. Dak.	2	6					2			
Ohio	1	3	4				4			
Oklahoma		1					2		1	
Oregon		2								
Penn.		3					7	2		
Rhode Isl.								1		
So. Car.	1	1					4			
So. Dak.		3					4			
Tennessee		4					6		3	
Texas		13	1		2		8	1		
Utah		2					8			
Vermont		1	1		1	1	3			2
Virginia		6					7		3	
Washington		1	1				1			
W. Virginia		1					3	2		
Wisconsin										
Wyoming	1	1								
DC										
Guam										
N. Nar. Is.		1								
Puerto Rico										
<b>Totals</b>	<b>23</b>	<b>104</b>	<b>10</b>	<b>3</b>	<b>8</b>	<b>6</b>	<b>122</b>	<b>27</b>	<b>13</b>	<b>6</b>

Statute State	2002					2003					Total
	922(i)	922(j)	922(u)	924(l)	924(m)	922(i)	922(j)	922(u)	924(l)	924(m)	
Nevada		3				1	2				6
New Hamp.							1				4
New Jersey											0
N. Mexico		3				1	3				10
New York		5	1	2	2		8	2			29
No. Car.		4		1			12	3	1	1	33
No. Dak.		4					3				17
Ohio		2	1				1	1			17
Oklahoma							7				11
Oregon											2
Penn.		2	1				4	3			22
Rhode Isl.											1
So. Car.		2					2	1			11
So. Dak.		1					1				9
Tennessee		5		1			9	1	1		30
Texas		20	3	1			16	1			66
Utah		5					15				30
Vermont		2					1				12
Virginia	2	7	1	4		1	3	2	5		41
Washington						2					5
W. Virginia		8	4				4	1			23
Wisconsin			1				1				2
Wyoming			2		1				1		6
DC	1					1					2
Guam		3			1						4
Puerto Rico		1									2
Virgin Islands		1					1				2
<b>Totals</b>	<b>3</b>	<b>150</b>	<b>27</b>	<b>14</b>	<b>8</b>	<b>14</b>	<b>173</b>	<b>30</b>	<b>12</b>	<b>5</b>	<b>758</b>

## Although police routinely recover guns with obliterated serial numbers, prosecutions are rare.

"Traffickers usually obliterate serial numbers to disguise or sever any connection between themselves and the firearm or the original source of the firearm."<sup>73</sup>

### The significance of obliterated serial numbers is too often overlooked

- Obliterating the serial number on a gun is a strong indication that the firearm has been used for criminal purposes.
- The number of obliterated serial number cases filed by federal prosecutors declined by 9% between 2002 and 2003.
- Since the inception of Project Safe Neighborhoods in 2001 obliterated serial number prosecutions increased by more than 17% (17.1%).

By law, gun makers must etch a serial number into each gun sold in the United States. The serial number, along with the make and model of the gun, is used to help law enforcement trace the origin of the firearm if it turns up in a crime. Under federal law, manufacturers must record the serial number of every gun they make and which distributor or licensed firearms dealer received it. Retail dealers must keep a record of the name and address of the individual who buys each

gun, along with the serial number of the firearm. When a gun is recovered in the course of a criminal investigation and traced by law enforcement, the trace yields two important pieces of information: the name of the gun store that sold the firearm and the name of the first retail purchaser of the gun. This information is instrumental in tracking down, investigating and prosecuting straw purchasers, corrupt gun stores, and gun traffickers.

[73] *Pattern crimes: firearm trafficking enforcement techniques*, Greco, Joseph P., The FBI Law Enforcement Bulletin, September 1998.

### ***A Closer Look: Federal Statute Relating to Obliterated Serial Numbers***

**Section 922(k)** of Title 18 U.S. Code makes possessing, selling or transferring a firearm with an obliterated serial number a federal crime.

The only reason to deface a serial number on a firearm is to hinder police efforts to trace it in the event it is recovered in a crime. As the ATF has noted, "The obliteration of the serial number on a crime gun is a key criminal indicator of trafficking, because it shows that someone in the chain of possession assumes that the gun will be used for a crime."<sup>74</sup> Traffickers usually obliterate serial numbers to disguise or sever any connection between themselves and the firearm or the original source of the firearm. For example, obliterating the serial number can hinder law enforcement's efforts to identify a straw purchaser or a corrupt firearm dealer.<sup>75</sup>

#### **Prosecutions Related to Statutes Regarding Obliterated Serial Numbers - FY 2000-2003**

2000	76 cases
2001	86 cases
2002	97 cases
2003	89 cases

While guns with obliterated serial numbers are routinely recovered, the number of obliterated serial number cases filed by federal prosecutors declined by more than 9% over the last year, and this law remains rarely enforced. For instance, a recent Philadelphia Inquirer story reported that 431 crime guns with obliterated serial numbers were recovered last year in Philadelphia, but only 3 obliterated serial number charges were filed last year in its judicial district.<sup>76</sup>

Although 2,549 guns with obliterated serial numbers were recovered in these seven cities during 2000, federal prosecutions totaled only 21 cases – a ratio of 8 prosecutions for every 1,000 potential cases under Section 922(k).

Thousands of guns with obliterated serial numbers are recovered each year, but even though these guns are a prime indicator of gun trafficking, the statute that makes it a crime to remove the serial number from a

[74] ATF, Crime Gun Trace Reports (2000), July 2002, page 50.

[75] *Pattern crimes: firearm trafficking enforcement techniques*, Greco, Joseph P., The FBI Law Enforcement Bulletin, September 1998.

[76] *Details of guns tied to city crimes*, Nathan Gorenstien, The Philadelphia Inquirer, August 29, 2004, page B01.



**Obliterated Serial Numbers Recovered in Crimes in Selected Cities and the Number of Prosecutions in that Jurisdiction (2000)**

City	Guns with Obliterated Serial Numbers <sup>77</sup>	922(k) Prosecutions
Baltimore	303	2
Boston	71	4
Chicago	667	0
Detroit	227	8
New York	714	7
Philadelphia	468	0
Washington DC	99	0
<b>Total</b>	<b>2,549</b>	<b>21</b>

firearm is essentially ignored. The practice of obliterating serial numbers will remain attractive to criminal as long as the possibility of prosecution remains remote.

The most recent statistics available from the Youth Crime Gun Initiative indicate that in the cities where guns are frequently trafficked from other states, obliterated serial numbers are common but prosecutions are almost non-existent.

## Obliterated Serial Number Prosecutions Under Section 922(k)

	2000	2001	2002	2003	Total
<b>State</b>					
Alabama	1	4	1	3	9
Alaska	1			1	2
Arizona	2	1	1	2	6
Arkansas			2	3	5
California	2	3	5	1	11
Colorado	3	3		2	8
Conn.				1	1
Delaware					0
Florida	1	1	4	2	8
Georgia		4	4	8	16
Hawaii		1	1	1	3
Idaho	1		3		4
Illinois	4	5	2	2	13
Indiana	2	3			5
Iowa	1			2	3
Kansas			2		2
Kentucky	1	1	1	3	6
Louisiana	2		4	3	9
Maine		1			1
Maryland	2	1	1	1	5
Mass	5	1	2	2	10
Michigan	4	5	2	3	14
Minnesota	1		1	1	3
Mississippi		3	4	1	8
Missouri	3	2	5	2	12
Montana		1		1	2
Nebraska			2	2	4
Nevada	2			1	3

	2000	2001	2002	2003	Total
<b>State</b>					
New Hamp.					0
New Jersey	1		2	3	6
N. Mexico	1	3			4
New York	10	10	5	7	32
No. Car.	1		2	2	5
No. Dak.	2				2
Ohio	3		2		5
Oklahoma				1	1
Oregon				3	3
Penn.	1	3	2	3	9
Rhode Isl.				1	1
So. Car.		3	2	1	6
So. Dak.	2	1			3
Tennessee		2	4	1	7
Texas	4	3	4	4	15
Utah		6	6	4	16
Vermont		2			2
Virginia	6	4	4	5	19
Washington	1		1		2
W. Virginia			2		2
Wisconsin			1		1
Wyoming			5		5
DC				1	1
Guam		2			2
N. Nar. Is.					0
Puerto Rico	1	3	5	5	14
Virgin Islands	5	4	3		12
<b>Total</b>	<b>76</b>	<b>86</b>	<b>97</b>	<b>89</b>	<b>348</b>

## The laws aimed at keeping guns out of schools and away from children are rarely enforced.

In February 2002, Attorney General Ashcroft announced a new initiative under PSN known as "Project Sentry," with the objective of "prosecuting gun crimes committed at our nation's schools and dedicated to protecting juveniles from gun crime."<sup>78</sup> Under Project Sentry, every U.S. Attorney's office was given an additional prosecutor to "help prosecute and supervise juveniles who violate federal and state firearms laws . . . prosecute adults who illegally provide firearms to juveniles, and . . . promote school safety through community outreach efforts."<sup>79</sup> During the February 2002 speech, the Attorney General emphasized that "the Department of Justice is dedicated to improving the tools that we have to reduce criminal access to guns, prosecuting those who violate our nation's gun laws, and ensuring a safe learning environment for our children."<sup>80</sup>

Three provisions of the federal criminal code are aimed at preventing minors from obtaining firearms and keeping guns out of schools, but none of these laws is regularly enforced, despite overwhelming evidence that guns are routinely brought into schools and that guns crimes are often committed by minors. According to the United States Attorney's Manual, juveniles as young as 15 can be prosecuted in federal court as adults for committing any violent felony – including the possession of a handgun by a juvenile.<sup>81</sup>

By any standard, the number of gun cases generated under Project Sentry has been miniscule. Just 23 cases were filed last year – an average of one case for every 4 prosecutors. The Department of Justice spent \$9 million on the salaries for the Project Sentry prosecutors, meaning that taxpayers spent \$391,304 in prosecutor salaries alone for each of these cases.

### Guns in Schools (18 USC 922(q))

Academic and government researchers estimate that anywhere from 46,000<sup>82</sup> to 845,000<sup>83</sup> students bring firearms to school each year. A recent review of the implementation of the Gun Free Schools Act conducted for the U.S. Department of Education found that:

- During the 2000-2001 school year, 3,657 students were expelled for bringing a firearm to school.
- Forty-eight percent of these students were expelled from high schools, 28 percent were in junior high, and 24 percent were in elementary school.
- Forty-nine percent of these expulsions were for bringing a handgun to school.<sup>84</sup>

[78] Attorney General Ashcroft's NICS Speech at the Department of Justice Conference Center, Wednesday, February 13, 2002. See, <http://www.psn.gov/News.asp?FormMode=release&ID=26>.

[79] Ibid.

[80] Ibid.

[81] United States Attorneys' Manual, Title 9, Criminal Resource Manual, Section 54, Determining the Appropriate Forum for Prosecution.

[82] E-mail correspondence from Gary Kleck to Jim Kessler, 2001

[83] Youth Risk Behavior Survey, 1997, Centers For Disease Control.

[84] *Report on the Implementation of the Gun Free Schools Act in the States and Outlying Areas: School Year 2000-2001*, United States Department of Education, Office of Safe and Drug Free Schools, October 2003.

### **Federal laws designed to keep guns away from schools are almost never enforced**

- Last year, the Department of Justice spent \$9 million on salaries for the Project Sentry prosecutors. However, only 23 cases were filed last year involving possessing a firearm in a school zone and selling a firearm to a minor – meaning each case filed for this offense last year cost an average of \$391,304 for prosecutor salaries alone.
- The 43 states that did not bring any cases in 2001 for possessing a firearm in a school zone reported that 2,841 students were found to have brought a firearm to school.
- In 37 states, prosecutors did not charge a single individual with possessing a firearm in a school zone during the last four years, and 34 of the 57 922(q) prosecutions occurred in just three jurisdictions: Tennessee (16), Alabama (11) and Washington DC (8).

Overall, the number of expulsions increased 29 percent, from 2,837 in 1999-2000 to 3,657 in 2000-2001. Nineteen states showed an increase in the number of expulsions from 1999-2000 to 2000-2001, with the largest increases in Arizona, Ohio, South Dakota, and Vermont. The largest declines were reported in Maine, Missouri, New Jersey, Oklahoma, Oregon, and Wyoming.<sup>85</sup>

In the 43 states that did not bring any Section 922(q) prosecutions between 2000 and 2001, 2,841 students were reported to have brought a firearm to school. During the 2000-2001 school year, Ohio officials expelled 1,211 students (829 high school students) for bringing a firearm to school, but federal prosecutors did not file charges against any of those students. In fact, during that time period, 6 states that ranked in among the top 10 for school expulsions for bringing a firearm to school did not bring a single case under Section 924(q).

[85] Ibid.

**Federal Prosecutions for Possession of Firearm in a School Zone in 2000 and 2001 in States with Largest Number of Firearms-Related Expulsions in 2000-2001 School Year<sup>86</sup>**

State	Students Expelled For Bringing Gun To School	Number of Prosecutions Under 18 USC 922(q)
Ohio	1,211	0
Texas	204	0
Virginia	204	2
Alabama	200	4
Arizona	131	1
California	123	0
Washington	116	2
Louisiana	113	0
Georgia	111	0
Florida	95	0
<b>Total</b>	<b>2,508</b>	<b>9</b>

Despite thousands of instances where students are caught bringing guns to school, federal charges for this misconduct are almost non-existent. Only 57 defendants were prosecuted for bringing a gun onto

school grounds from 2000 to 2003, and 34 of the 57 prosecutions under Section 922(q) were in just three jurisdictions: Tennessee (16), Alabama (11) and the District of Columbia (8).

[86] The 2000/2001 school year includes expulsions between September 2000 and August 2001. The federal fiscal year for 2000 includes prosecutions filed between October 1, 1999 and September 31, 2000, while the fiscal year for 2001 includes prosecutions filed between October 1, 2000 and September 31, 2001.

## Minors and Guns (18 USC 922(b)(1) and 922(x))

### Federal laws designed to keep guns out of the hands of minors are almost never enforced

- Between 2000 and 2003, prosecutors filed only 29 charges under the two statutes that prevent the sale of guns to minors.
- 16 of those cases were filed in just 2 states – Arizona (8) and Montana (8).
- In 39 states, federal prosecutors did not file a single charge under 922(b)(1) or 922(x) during this time period.

According to two recent ATF Youth Crime Gun Initiative reports, 8.5% of violent gun crimes in the United States are perpetrated by youth under the age of 18.<sup>[87]</sup> That translates to 106,000 violent youth gun crimes between 2000 and 2002.<sup>[88]</sup>

While youth commit a sizable percentage of violent crime in America, federal prosecutions for supplying guns to minors almost never occur (although not all youth obtain their guns illegally). Between 2000 and 2003, prosecutors filed only 29 charges under the two statutes that prohibit the sale of guns to minors. Sixteen of those cases were filed in

just two states – Arizona and Montana – with eight cases each. In the vast majority of states, prosecutors did not file a single case under Sections 922(b)(1) or 922(x). In 2003, only 5 of these cases were filed in the entire country.

In total, 87 cases were brought in federal court over three years alleging violations of the statutes aimed specifically at denying illegal access to guns to children and keeping firearms out of schools. These laws are almost never enforced, and therefore provide no deterrent to gun traffickers and straw purchasers who sell to minors.

[87] *Youth Crime Gun Initiative, Crime Gun Trace Reports 1999 and 2000*, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, July 2001 and July 2002.

[88] Data regarding violent crimes committed with a gun was obtained from the Bureau of Justice Statistics website at: <http://www.ojp.usdoj.gov/bjs/glance/tables/firearmnonfataltab.htm> on August 16, 2004.

## Guns in Schools and Selling to Minors

Statute State	2000			2001			2002			2003			TOTAL
	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	
Alabama			4						2			5	11
Alaska			1										1
Arizona		2	1		3			2			1	4	13
Arkansas													0
California					1								1
Colorado													0
Conn.													0
Delaware									1				1
Florida													0
Georgia													0
Hawaii													0
Idaho													0
Illinois													0
Indiana													0
Iowa													0
Kansas													0
Kentucky													0
Louisiana													0
Maine		1											1
Maryland												1	1
Mass													0
Michigan													0
Minnesota					1								1
Mississippi													0
Missouri	1												1
Montana		1			1			3		1	2		8
Nebraska					1								1
Nevada													0

### LEGEND

**922(b)(1): illegal sale to juvenile by dealer**

**922(x): illegal sale of handgun to juvenile or possession by juvenile**

**922(q): gun in school zone**

Statute State	2000			2001			2002			2003			TOTAL
	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	922b(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	
New Hamp.													0
New Jersey											1		1
N. Mexico				1						1	1		3
New York													0
No. Car.													0
No. Dak.													0
Ohio				1									1
Oklahoma													0
Oregon													0
Penn.							1						1
Rhode Isl.													0
So. Car.									1				1
So. Dak.											4		4
Tennessee	1					10			5		1		17
Texas				1	1		1		1				4
Utah													0
Vermont													0
Virginia			1			1							2
Washington			1			1							2
W. Virginia													0
Wisconsin						1							1
Wyoming													0
DC			3			3			2				8
Guam	1												1
N. Nar. Is.													0
Puerto Rico												1	1
<b>Totals</b>	<b>2</b>	<b>5</b>	<b>11</b>	<b>1</b>	<b>9</b>	<b>17</b>	<b>2</b>	<b>5</b>	<b>12</b>	<b>1</b>	<b>4</b>	<b>18</b>	<b>87</b>



# SECTION 3

## Project Safe Neighborhoods and Gun Crime

The goal of Project Safe Neighborhoods is not simply to increase prosecutions but to reduce crime. Both the number and rate (the number per 100,000 people) of homicides committed with firearms are increasing, though and PSN's nearly exclusive focus on two specific gun statutes may be part of the reason the program has not kept the level of gun crime in check.

The rate of violent crime has decreased since peaking in 1994 (7 years prior to the implementation of PSN), but the number of firearm related homicides have increased almost 8% since 2000.<sup>89</sup> In 2002, 9,369 people were killed in firearm homicides – a five-year high.<sup>90</sup> While 2003 violent crime statistics are not yet available, preliminary figures released by the FBI indicate that homicides rose again last year by 1.3%.<sup>91</sup> Not only are firearm homicides increasing, but the proportion of homicides committed with guns is also increasing, rising from 69.5% of all homicides in 2001 to 71.1% in 2002.<sup>92</sup> Almost 27% of all murders, robberies and aggravated assaults in 2002 were committed with a firearm, marking the highest percentage of violent crimes committed with a gun since 1997.<sup>93</sup>

In January 2002, ATF Special Agent Mark Kraft, a Project Safe Neighborhoods manager, warned that "it is very important for every community to determine the origin of its crime guns. If law enforcement does not uncover the source of a

### Firearm Homicides in the United States: 1999 through 2002<sup>94</sup>

Year	Number of Homicides Committed With Firearm
1999	8,480
2000	8,661
2001	8,890
2002	9,369
2003	N/A
<b>Total</b>	<b>34,500</b>

crime gun, the community they serve is destined to repeat the cycle of violence, as more guns from the same source will repeatedly be used to victimized the public."<sup>95</sup> The increasing number of firearm homicides highlights the importance of making sure that police take advantage of tracing services offered by the ATF and that U.S. Attorneys follow the directives issued by the Attorney General to go after individuals who supply firearms to criminals. Instead, the Justice Department has failed to give sufficient priority to cases that would help keep firearms out of the hands of felons. In the face of rising rates of gun-related violent crime, a change in course seems overdue.

[89] Uniform Crime Reports: 2002, Crime Index Offenses Reports, Table 2.10, Federal Bureau of Investigation. Historical violent crime data obtained from Federal Bureau of Investigation, Uniform Crime Reports as prepared by the National Archive of Criminal Justice Data and made available through the Bureau of Justice Statistics website at <http://www.ojp.usdoj.gov/bjs/>

[90] Historical firearm homicide data obtained from the Bureau of Justice Statistics website at <http://www.usdoj.gov/bjs/> on August 16, 2004.

[91] *Preliminary Crime Statistics*, Press Release, Federal Bureau of Investigation, May 24, 2004. While final homicide figures have not yet been released for 2003, historically at least two-thirds of all homicides are committed with a firearm. With preliminary homicide figures indicating an increase in overall homicides, it is likely that firearm homicides increased or remained steady over the last year.

[92] Uniform Crime Reports: 2001 and 2002, Federal Bureau of Investigation.

[93] *Crimes committed with firearms, 1973-2002*, Bureau of Justice Statistics, BJS Webpage at <http://www.ojp.usdoj.gov/bjs/glance/tables/gun-crimetab.htm>. Accessed on August 18, 2004.

[94] Uniform Crime Reports (2002), Crime Indexes Reported, Table 2.10, Murder Victims by Weapon, Federal Bureau of Investigation.

[95] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Mark Kraft, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 3.

**"It is very important for every community to determine the origin of its crime guns. If law enforcement does not uncover the source of a crime gun, the community they serve is destined to repeat the cycle of violence, as more guns from the same source will repeatedly be used to victimized the public."<sup>96</sup>**

*- Mark Kraft, Project Safe Neighborhoods program manager*

## Duplicating State Activity, Rather Than Enhancing Crime Gun Prosecutions

Project Safe Neighborhoods has often been promoted as a way to bring defendants who would otherwise be charged with a crime in state court to be prosecuted in the federal system, where they face stringent bail guidelines that often lead to pretrial detention as well as longer sentences upon conviction.<sup>97</sup> This idea seems plausible on its face, but a 2002 Cato Institute report found that "...the legal tools available to state prosecutors pursuing armed felons are, in many cases, essentially the same as those available to federal prosecutors."<sup>98</sup>

In fact, while the availability of stiffer sentences may well be an appropriate consideration in deciding whether to pursue a federal prosecution, it appears that thousands of defendants are being tried in federal court and sentenced to terms in federal prison under circumstances where state criminal penalties would have been available, either because the state in question has a similar gun statute or because the defen-

dant has violated another state law in addition to any federal gun crime.

For example, Virginia law is at least as strict as the federal statutes covering firearm offenses. In 1999, the Virginia General Assembly passed a series of statutes that brought the state's penalties for firearm crimes in line with federal law – including mandatory minimum sentences, and Virginia's bail provisions closely track federal law. Rather than declining, however, the number of "felon in possession" and "use in commission" cases filed in federal court in Virginia has increased by almost 45% since 2000, reaching 564 cases in 2003 – the fourth largest number in the entire country. However, for offenses uniquely under the purview of the federal government, including firearm trafficking and corrupt dealer offenses, federal prosecutors in Virginia only filed 21 cases during the same period of time.

[96] *Firearms Trafficking 101 or Where Do Crime Guns Come From?*, Mark Kraft, US Attorney Bulletin, January 2002, vol. 50, No. 1, p. 3.

[97] Attorney General Ashcroft's Speech Given at the Project Safe Neighborhoods National Conference, Columbia, South Carolina, January 23, 2003. See, <http://www.psn.gov/News.asp?FormMode=release&ID=21>.

[98] *There Goes the Neighborhood: The Bush-Ashcroft Plan to "Help" Localities Fight Gun Crime*, CATO Institute, Cato Policy Analysis, No. 440, May 28, 2002.

While every state except Vermont has prohibiting felons from possessing firearms and committing a felony with a firearm, very few states and local governments have enacted laws concerning firearms trafficking, corrupt firearm dealers and lying on the firearm purchase background check form.<sup>99</sup>

- Two states have a law against the interstate trafficking of firearms;
- 28 states have no law against lying on the firearm purchase background check form;
- 33 states do not require firearm dealers to obtain a state license or register with state authorities – while only 9 states have specific laws that allow law enforcement to review inventory and sales records kept by these dealers;

In light of the small number of prosecutions that target interstate gun-running and other offenses with a stronger relationship to uniquely federal interests, the indiscriminate use of

federal gun violations to lock up defendants involved in criminal activities covered by state law seems to be coming at the expense of efforts to crack down on the availability of guns to criminals. Since most United States Attorneys do not concentrate on the federal equivalent of these offenses, criminals who violate these federal statutes simply escape prosecution.

It may be desirable for the federal government to prosecute felons to ensure pretrial detention and more appropriate sentences, but federal prosecutorial resources should be primarily focused on firearm offenses that the state and local authorities cannot prosecute. Since the focus on PSN has been on felons in possession and people who have committed violent or drug crimes with guns, most other federal firearm crimes have not been enforced. Thus, guns are available to felons and they appear to be using them to commit more and more homicides with a firearm.

**"...I have directed each United States Attorney to prosecute, to the fullest extent possible, the following groups of offenders: violent offenders and organizations who use guns, illegal gun traffickers, and individuals who are prohibited from lawfully possessing a gun—such as felons in possession of a gun and those who attempt to purchase a gun in violation of the Brady Act. Under the nation's tough federal sentencing guidelines, criminals will serve hard federal time if convicted of one these crimes."**<sup>100</sup>

[99] Information on state level firearm laws was collected through a review of relevant state statutes and the following publications and websites: *State Laws and Ordinances: Firearms (2004)*, Bureau of Alcohol, Tobacco, Firearms and Explosives; *Survey of State Procedures Related to Firearms Sales – Mid-Year 2003*, Department of Justice, Bureau of Justice Statistics, August 2004 and The Firearms Law Center, Legal Community Against Gun Violence at <http://www.lcav.org/index.asp>.

[100] Attorney General Ashcroft's Speech Given at the Project Safe Neighborhoods National Conference, Columbia, SC, January 23, 2002. See, <http://www.psn.gov/News.asp?FormMode=release&ID=21>.

SECTION

4

## Conclusions and Recommendations

Even as the Justice Department has spent nearly \$1 billion since 2000 to combat gun crime, more Americans have been killed in firearm homicides and a greater proportion of violent crimes are committed with a gun than before Project Safe Neighborhoods began. A full accounting of the reasons PSN has failed to keep violent gun crime in check is beyond the scope of this report, but the data examined by AGSF point to some likely explanations.

- Federal prosecutors continue to direct almost all their resources at prosecuting violent offenders and individuals who illegally possess firearms. During 2003, 87% of all firearm related cases brought by federal prosecutors involved these two offenses. By contrast, lie-and-try prosecutions declined by almost 8%, and cases filed against corrupt firearm dealers have dropped by 11% since 2000.
- More than half the states do not have a law prohibiting lying on a firearm purchase background check form, almost two-thirds do not have the authority to inspect gun dealers or prosecute them for not keeping proper records, and only two states have a law against the interstate trafficking of firearms. Since most U.S. Attorneys do not concentrate on these offenses, criminals who violate these federal statutes simply escape prosecution.

AGSF believes that Project Safe Neighborhoods is not reducing violent gun crime because it largely duplicates or piggybacks on the efforts of state and local law enforcement rather than bringing the full

weight and authority of the federal government and its laws to bear against people who provide guns to criminals.

- When working with local authorities to combat firearms crimes, only federal prosecutors and law enforcement agencies have the authority and resources to quickly and efficiently investigate crimes that take place beyond the boundaries of the jurisdiction where an individual felon is found to possess a firearm. The failure to recognize the potential for a greater emphasis on this aspect of federal enforcement severely weakens the usefulness of the federal government's role in PSN partnerships.
- The total cost of incarcerating individuals prosecuted under PSN over the last four years is at least \$1.7 billion,<sup>101</sup> money that could be used for other law enforcement priorities. For instance, budget constraints have forced federal probation officials to scale back on the post-release supervision of some categories of felons.<sup>102</sup> Forty percent of parolees are caught violating laws or rules requiring their return to prison before completing parole<sup>103</sup> and 67% of individuals released from prison are re-arrested within 3 years.<sup>104</sup> Without evidence that PSN's diversion of thousands of criminals from state courts to the federal system (and federal prisons) is having an impact on violent crime, the question arises as to whether the program represents a cost-effective use of federal criminal justice resources.

[101] According to the Bureau of Prisons the average annual cost of incarceration per federal inmate is \$22,517. See, *Cost of Incarceration Fee, Operations Memorandum #015-3003 (5380)*, United States Department of Justice, Federal Bureau of Prisons, September 25, 2003.

[102] Statement of Leonidas Ralph Mecham, Director, Administrative Office of the U.S. Courts, House Appropriations Committee, Subcommittee on Commerce, Justice, State and the Judiciary, March 11, 2004.

[103] *Probation and Parole Supervision in the United States, 2003*, Bureau of Justice Statistics, July 2004.

[104] *Criminal Offender Statistics*, Bureau of Justice Statistics.

AGSF offers the following recommendations to the Justice Department and the Executive Office of the United States Attorneys to improve the effectiveness of Project Safe Neighborhoods and other federal gun enforcement efforts to curb the availability of guns to criminals:

- **Hold U.S. Attorneys Accountable for Targeting The Source of Firearms:**

Simply directing United States Attorneys to prosecute illegal gun traffickers, individuals who are prohibited from lawfully possessing a gun and individuals who have who attempt to purchase guns in violation of the Brady Act has failed to bring about more prosecutions.

The Justice Department should formally review each United States Attorney's gun crime reduction strategy to ensure that it has at least one component targeting individuals who supply illegal guns to the communities in their judicial district. In some communities, the component might involve building a case against a corrupt gun dealer, while in others it might be focused on a straw-purchasing network. If the review process indicates that a United States Attorney is not actively investigating and prosecuting the source of illegal firearms, the office in question should be required to document the steps to increase prosecutions in these areas.

- **Use Recovered Firearms As Investigative Tool:**

The United States Attorney for the Eastern District of Virginia, Paul McNulty, has observed that "every felon with a gun is a potential trafficking case."<sup>105</sup> AGSF agrees, and we believe that more systematic tracing efforts can help establish patterns in firearm trafficking and acquisition among felons.

Analyzing crime trace data can help identify straw purchasers, corrupt gun dealers, and locations frequently associated with the sale or recovery of crime guns. The ATF notes that crime gun tracing aids in the identification of violent criminals and those who illegally supply them, and that "the analysis of a large number of individual traces from many similar jurisdictions helps identify consistent crime gun patterns that may not be apparent from information in a single trace or traces from a single jurisdiction or state. With information about patterns and trends, more violent criminals can be arrested more efficiently, more focused regulatory enforcement can be undertaken, and more gun crime and violence can be prevented."<sup>106</sup>

[105] *Trio charged with illegal firearm sales*, Jerry Seper, The Washington Times, March 16, 2004, page B03.

[106] *Crime Gun Trace Reports (1999) National Report*, The Youth Crime Gun Interdiction Initiative, Bureau of Alcohol, Tobacco and Firearms, November 2000.

A specific policy on tracing should be a requirement for all jurisdictions that participate in Project Safe Neighborhoods. The ATF should provide an analysis of all firearms traced from each PSN jurisdiction to the appropriate U.S. Attorney, ATF office, and local PSN partners to facilitate the investigation and prosecution of illegal gun suppliers.

- **Encourage Cooperation Among PSN Programs:** U.S. Attorneys often have to work with federal prosecutors and law enforcement in other jurisdictions in order to investigate and prosecute gun trafficking. For example, federal prosecutors in New York have to deal with a flow of illegal guns from states to the south. Once in New York, the guns are sold to criminals. To adequately deal with the problem of illegal guns, a working relationship has to be formed between investigators and prosecutors in the jurisdiction where the firearm was originally purchased and the jurisdiction where it is recovered. This cooperation will lead to identification of firearm traffickers and disrupt the flow of guns and the associated crimes that occur in both jurisdictions.
- **Review Sentencing Guidelines Applied to Traffickers and Use Sentence Enhancements as Leverage in Trafficking Investigations:** The United States Sentencing Guidelines do not appear to adequately take into account the large

number of firearms that can be trafficked by one individual or organization. While the guidelines provide for enhancements based on the number of firearms involved in an offense, these increases are relatively small.<sup>107</sup> The maximum sentence, depending on the criminal history of the defendant can be as little as 7 to 9 years no matter how many firearms were involved in the offense. The Criminal Division of the Justice Department, the ATF, and the U.S. Sentencing Commission should review the adequacy of the guidelines in punishing high volume firearm traffickers. If appropriate, amendments should be proposed to the U.S. Sentencing Commission for consideration.

Even without modifications to the sentencing guidelines, U.S. Attorneys offices can and should attempt to obtain leads and evidence to build new trafficking cases as part of plea negotiations in criminal cases involving guns. As a matter of policy, defendants charged with illegal possession or use of a firearm should be required to cooperate in efforts to identify and prosecute others who illegally supplied the gun. U.S. Attorneys should not support downward departures from the sentencing guidelines based on "substantial assistance" to prosecutors in the absence of such cooperation.

- **Establish Prosecution Guidelines:** The Justice Department Inspector General has reported that many ATF field offices do not have complete prosecution guidelines

[107] United States Sentencing Guideline 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).

for firearm cases from the local United States Attorney's Office. As a result, agents may be confused over what types of cases merit referral for prosecution. United States Attorneys should provide prosecution guidelines for all federal firearm offenses. This will help ensure that ATF agents refer appropriate cases and that criminals won't escape punishment due to a communication breakdown between prosecutors and investigators.

- **Evaluate the Effectiveness of Project Safe Neighborhoods:** During 2005, the effectiveness of Project Safe Neighborhoods in each judicial district should be evaluated. Every PSN program has a research partner that has collected information for use in an evaluation process. This evaluation should be designed to assess whether the tactics employed under PSN have made an impact on violent crime, firearm homicides or other crimes targeted by the program.

## Focus of Project Safe Neighborhoods

District	Felons	Domestic Violence/	Trafficking	Corrupt Dealers	Straw Purchase/Lying on Form	Stolen Firearms	Firearms w/ Obliterated Serial #	Juveniles/ Minors/ Schools	Gangs/ Criminal Organizations
Alabama M.	x								
Alabama N.	x								
Alabama S.	x								
Alaska	x								x
Arizona	x		x						x
Arkansas E.	x		x						
Arkansas W.	x							x	
California C.	x								
California E.	x								x
California N.	x		x						
California S.	x							x	x
Colorado	x		x						
Connecticut	x								
Delaware	x			x	x				
Florida M.	x							x	
Florida N.	x							x	
Florida S.	x								
Georgia M.	x								
Georgia N.	x		x	x				x	
Georgia S.	x								
Hawaii	x							x	
Idaho	x		x						
Illinois C.	x								
Illinois N.	x		x						x
Illinois S.	x								
Indiana N.	x	x	x						
Indiana S.	x							x	
Iowa N.	x							x	
Kansas	x								



### Focus of Project Safe Neighborhoods *continued*

District	Felons	Domestic Violence/	Trafficking	Corrupt Dealers	Straw Purchase/Lying on Form	Stolen Firearms	Firearms w/ Obliterated Serial #	Juveniles/ Minors/ School	Gangs/ Criminal Organizations
Kentucky E.	x							x	
Kentucky W.	x								
Louisiana E.	x		x	x	x				
Louisiana M.	x			x	x			x	
Louisiana W.	x			x					
Maine		x							
Maryland	x							x	
Massachusetts	x			x	x			x	x
Michigan E.	x								
Michigan W.	x							x	
Minnesota	x							x	
Mississippi N.	x			x	x				x
Mississippi S.	x			x	x				
Missouri E.	x								x
Missouri W.	x								
Montana	x								x
Nebraska	x	x							x
Nevada	x								
N. Hampshire	x	x							x
N. Jersey	x		x						x
N. Mexico	x								
New York E.	x								x
New York N.	x		x						x
New York S.	x	x	x						
New York W.	x								
N Carolina E.	x								
N Carolina M.	x							x	x
N Carolina W.	x								
North Dakota	x								
Ohio N.	x							x	
Ohio S.	x								
Oklahoma E.	x					x			
Oklahoma N.	x								

District	Felons	Domestic Violence/	Trafficking	Corrupt Dealers	Straw Purchase/Lying on Form	Stolen Firearms	Firearms w/ Obliterated Serial #	Juveniles/ Minors/ School	Gangs/ Criminal Organizations
Oklahoma W.	x							x	x
Oregon	x								
Penn. E.	x				x				x
Penn M.	x					x		x	
Penn. W.	x		x	x	x				
Rhode Island	x								
S. Carolina	x		x						
S. Dakota	x	x							
Tennessee E.	x		x					x	
Tennessee M.	x								
Tennessee W.	x					x			
Texas E.	x								
Texas N.	x							x	
Texas S.	x							x	
Texas W.	x	x							
Utah	x								
Vermont		x							
Virginia E.	x								
Virginia W.	x								
Washington E.	x								x
Washington W.	x	x	x						
W. VA N.		x							
W. VA S.	x		x		x				
Wisconsin E.	x		x		x			x	
Wisconsin W.	x								
Wyoming	x							x	x
Total	85	10	18	9	10	3	0	24	19
Percentage	96.50%	11.20%	20.40%	10.20%	11.30%	3.40%	0	27.20%	21.50%

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The Americans for Gun Safety Foundation is a non-profit, non-partisan organization that seeks to educate the public about supporting the rights of individuals to own guns and on the need for better laws and stronger enforcement of existing laws to help keep guns out of the hands of criminals and children.

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